CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 565

RUTH LOUGHRAN, PETITIONER,

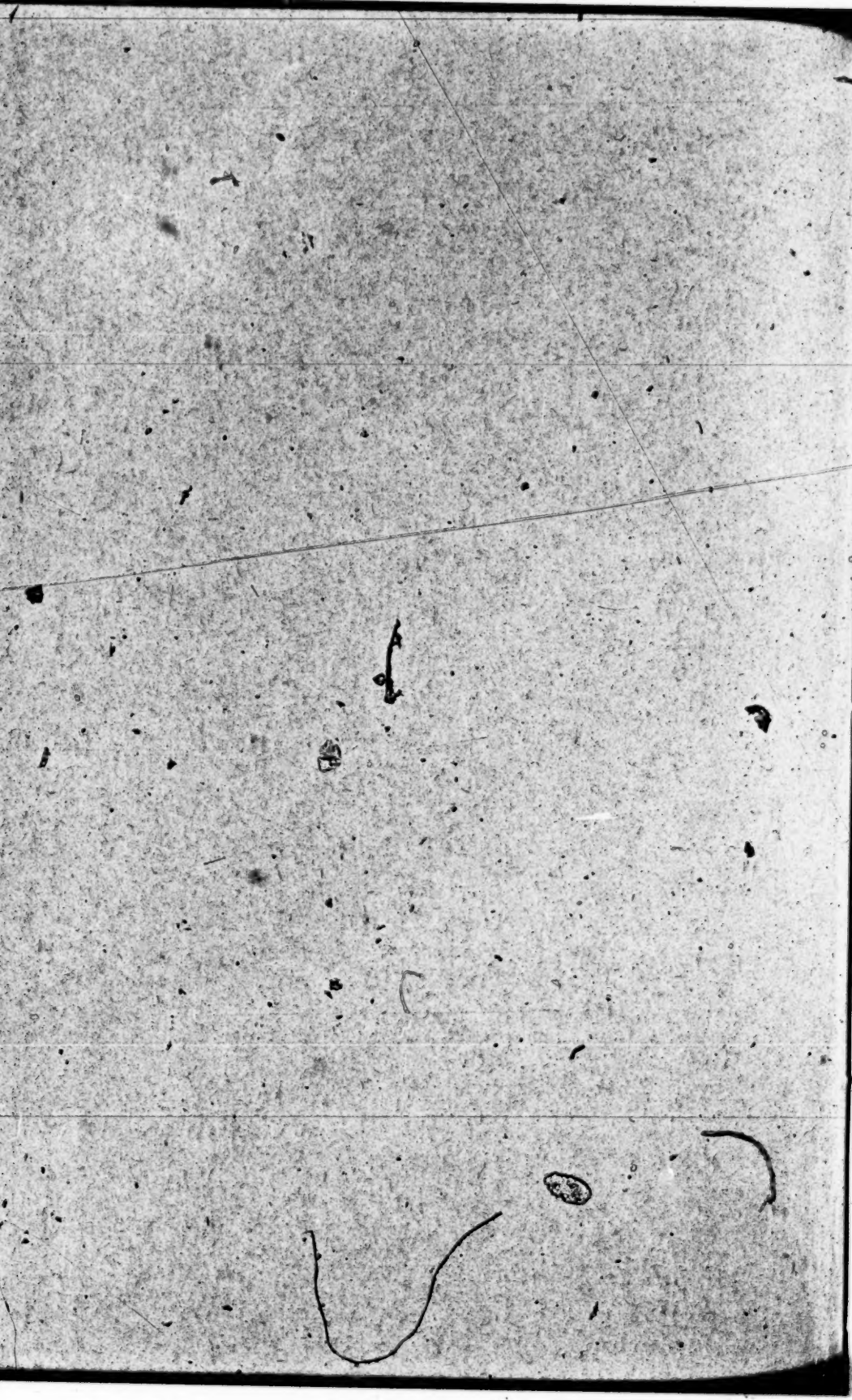
vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN, AND CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED OCTOBER 31, 1933

CERTIORARI GRANTED DECEMBER 4, 1933



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 21, 1933

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[fol. 2]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING AN EQUITY COURT.

Equity. No. 54647

RUTH LOUGHRAN, Complainant,

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Defendants

AMENDED BILL—Filed August 29, 1932

To the Honorable the Justices holding the Equity Court of the District of Columbia:

By leave of court first had and obtained, your complainant, Ruth Loughran, respectfully shows to the Court as follows:

I. That she is a resident of the District of Columbia, and a citizen of the United States, and brings this suit in her own right.

II. That the defendants are citizens of the United States and residents of the District of Columbia, and are sued as trustees under the last will and testament of Daniel Loughran, Sr., deceased, and said defendants are further sued as voluntary trustees, de son tort, of the rents and profits of the real estate belonging to the estate of Daniel Loughran, Sr., and the estate of Daniel Loughran, Jr., and to this complainant as the widow of Daniel Loughran, Jr., as will more fully hereinafter appear.

III. That on December 12, 1924, under decree of the Supreme Court of the District of Columbia, your complainant was divorced absolutely from her then husband, Henry Daye, and that for a year or more prior to said absolute divorce being granted in the Supreme Court of the District of Columbia, she had removed from the District of Co-

lumbia, and made her home and residence in the State of Florida, in which state, and while a bona fide resident thereof, she was married to Daniel Loughran, Jr., on January 16, 1926, by license duly obtained in said State, and by a [fol. 3] marriage ceremony duly celebrated before Honorable J. N. Milton, County Judge of Columbia County, State of Florida, a copy of the marriage certificate so celebrating said marriage being attached hereto as Exhibit "A" to this bill of complaint.

IV. That subsequent to her said marriage on January 16, 1926, to said Daniel Loughran, Jr., she maintained a residence in said State of Florida with said Daniel Loughran, Jr., until along about July, 1927, spending all of her time in said State from the date of her said marriage until July, 1927, except for visits to her mother in the State of Virginia. That on or about July, 1927, her said husband Daniel Loughran, Jr., established a legal residence in Alexandria, State of Virginia, and while a legal resident in the City of Alexandria, State of Virginia, there wrongfully instituted a suit against your complainant for an absolute divorce, to which your complainant filed her cross-bill, and that in due course the said cause came on for trial and the bill of complaint against your complainant herein was dismissed, and the relief therein prayed for denied, and the cross-bill, filed by your complainant, was sustained, and the relief therein prayed for granted, the terms of the order of the Corporation Court of said City of Alexandria, State of Virginia, being as per copy thereof hereto attached and marked Exhibit "B".

V. That your complainant further says that the marriage of herself and said Daniel Loughran, Jr., in Columbia County, State of Florida, was in all respects a marriage in good faith, duly celebrated in accordance with the laws of the State of Florida; that no lawful impediment against said marriage existed, and that the same is entitled to the full faith and credit of this court, and full legal recognition; that likewise a decree of limited divorce and alimony, in favor of your complainant, granted to her by the Corporation Court of the City of Alexandria, State of Virginia, was obtained in an adversary proceeding, duly prosecuted by her; that the decree granted therein remains in effect, unmodified or unamended; that the complainant therein,

your complainant's deceased husband, was the cross-defendant therein; that during his lifetime he accepted the terms of said decree and complied therewith, in part; that the same is a subsisting, effective, final and binding decree of said court, and that the same is entitled to full faith and [fol. 4] credit of this court, and that the same, in law, entitles your complainant to the full benefits awarded thereunder as to all rights to which she, as the widow of said Daniel Loughran, Jr., deceased, is entitled, and also to the benefits which had accrued to her thereunder prior to the death of said Daniel Loughran, Jr., and said decree, and the terms thereof, are pleaded herein, as establishing the good faith and finality of said decree and its binding effect upon the estate of her said deceased husband, Daniel Loughran, Jr.

VI. Plaintiff further shows to the court that on, to wit: the 26th day of April, 1917, Daniel Loughran, Sr., a resident of the District of Columbia, died testate, leaving as his heirs-at-law Daniel Loughran, Jr., the husband of your complainant, and the following: Joseph Loughran, Edward Loughran, John Loughran, Charles Loughran, Margaret Loughran, Regina Loughran, Katherine Loughran, Mary Loughran Duke, and Donald Carter. That upon his death, said Daniel Loughran, Sr., was the owner of much valuable real estate in the District of Columbia, same being of the fair value of more than one million dollars, ($1,000,000), which said property was, to a large extent, rented and producing large revenues, and that by the terms of the last will and testament of said Daniel Loughran, Sr., deceased, which is duly probated among the records of the Probate Court of the District of Columbia, said testator appointed, as trustees of all of said real estate and to collect the rents thereof and to disburse the same ratably to his heirs-at-law, John Loughran, Charles Loughran, and Joseph Loughran, as trustees under said last will and testament, said appointment of said trustees being accepted by them, and upon the death of said testator, said trustees assumed the duties of such trustees and took charge and possession of said real estate and began collections of said rents and payments of expenses on said property and disbursements to the heirs-at-law as their interests appeared. Upon information and belief, obtained since the filing of her original bill herein, from the joint and several answer of the defendants filed

herein, your complainant alleges and charges that prior to the death of Mary Loughran, widow of Daniel Loughran, Sr., the defendants herein were trustees for the collection of the rents and profits of all the real estate belonging to [fol. 5] the estate of Daniel Loughran, Sr., and that subsequent to the death of said Mary Loughran, widow of Daniel Loughran, Sr., said defendants have acted as trustees for the collection of all of said rents and profits, although without authority from the last will and testament of the said Daniel Loughran, Sr., so to do; that without such authority, they have proceeded as voluntary trustees, de son tort, to collect such rents and profits and as set out in their said joint and several answer herein filed to your complainant's original bill of complaint, that as to the terms of said trust so assumed your complainant refers to the admission of paragraph 3 of said joint and several answer, in which the terms of said voluntarily assumed duty or trust by said defendants are set out, and your complainant says that the actions of said trustees, as set out by them, constitute them, in law, trustees for the benefit of the estate of Daniel Loughran, Jr., and also for the benefit of your complainant, as the widow of Daniel Loughran, Jr., based upon her right to receive a portion of said rents and profits as said widow.

VII. Subsequent to September 6, 1931, the date of said Daniel Loughran, Jr.'s death, and up to the present time, the said defendants herein, John Loughran, Joseph Loughran and Charles Loughran, have continued to act as such voluntary trustees in the collection of the rents and profits of said real estate, the management thereof, and the disbursement of the net proceeds, except as hereinafter alleged.

VIII. As alleged in the preceding paragraph, Daniel Loughran, Jr., husband of your complainant, died, leaving an alleged last will and testament now pending for probate in the Probate Branch of the court, wherein and whereby his interest in the estate of his father were disposed of as by said alleged last will and testament will appear. Complainant shows, however, that a proper protest to the probate of said last will and testament was presented to said Probate court in due course, and is pending for consideration in connection with the proposed probate thereof, said protest raising the question of the domicile of said Daniel

Loughran, Jr., deceased, as well as the mental condition of said decedent at the time of the execution of said alleged last will and testament, and your complainant says that it [fol. 6] will be many months before said instrument has been disposed of by proper order and decree of this court.

IX. Your complainant further shows that on September 6, 1931, when Daniel Loughran, Jr., her husband, died, he was indebted in various amounts; that one of the debts owing by him was owing to your complainant on account of allowances due her under the final decree of limited divorce granted her, as shown by a copy thereof, Exhibit "B" hereto, said sum amounting to approximately Two Thousand Dollars ($2,000.00), no part of which has since been paid by the defendants herein, or anyone representing the estate of said decedent, although due proof thereof has been filed in the Probate Court of the District of Columbia.

X. Notwithstanding the fact that said Daniel Loughran, Jr., died September 6, 1931, the said John Loughran, Charles Loughran and Joseph Loughran, as voluntary trustees of the rents and profits of the real estate of said Daniel Loughran, Sr., continued to collect the rents and profits from the real estate of said Daniel Loughran, Sr., which had descended by virtue of his will to his children and heirs-at-law, and your complainant is informed and believes that on the death of said Daniel Loughran, Jr., there had accumulated in the hands of said defendants a sum of at least $6,699.65, over and above all proper disbursements to that date, and upon information and belief (which information has been obtained from the defendants) there has since accumulated up to May 13, 1932, a net balance of $19,447.13 from the collection of rents belonging to the estate of Daniel Loughran, Sr., by said defendants, and your complainant says that since May 13, 1932, there has accumulated an additional sum of at least $10,000.00, after payment of all proper charges and expenses for collection of the same, and that said defendants have collected, or should have collected and have in hand, total net rentals from September 6, 1931, to date, or at least $35,000, or the sum of $3,500, net to each of the ten (10) heirs-at-law of said decedent; that the estate of Daniel Loughran, Jr., would thereby be entitled from said defendants to have and receive at least the sum of $3,500, as its one-tenth share of

said net rentals from said properties so collected by said [fol. 7] defendants, subject to the deduction of any sum due and payable directly to your complainant.

XI. That the net sum of $3,500.00, or more, belonging to the estate of Daniel Loughran, Jr., deceased, as herein set forth, was collected by said defendants, and they were required under their voluntary trusteeship to hold the same in trust, unless and until the same were paid over to a proper legal representative of the estate of Daniel Loughran, Jr., deceased, appointed by the Probate Court of the District of Columbia, or to your complainant, and that said defendants were without right or authority to do any other act or thing with said funds, and were especially without right or authority to elect, or choose, or to decide to pay from said funds any amount alleged to be due, or believed by them to be due, to any of the creditors of said Daniel Loughran, Jr., deceased, pending the appointment of a proper legal representative of said estate to whom said funds could be paid, for the purpose of having said debts paid under the orders of this court, but your complainant says that notwithstanding the duties of said defendants, and disregarding the same, and to the great prejudice of your complainant, and in direct violation of the law, and without regard to the authority of the Probate Court, or the pendency therein of the proposed probate of the will of Daniel Loughran, Jr., that said defendants have usurped the authority of said Court, and as complainant is informed and believes, said information coming chiefly from said defendants, have taken the funds belonging to the estate of said Daniel Loughran, Jr., deceased, and paid the same, or the greater portion thereof, to certain creditors and alleged creditors, selected by said defendants to be paid, paying, among other things, excessive and illegal bills for funeral expenses and other purposes, and failing and neglecting utterly to pay to your complainant either a portion of the sum due her by her said husband at the time of his death, or to pay to her any reasonable portion of the net rentals to which she is entitled as the widow of said decedent, and that your complainant says that since the death of her said husband, said defendants have deliberately and purposely withheld from her, and have failed and refused to pay to her even one dollar or one cent from the assets of said estate, and, on the contrary,

have used every means possible to prevent her receiving [fol. 8] anything from said estate, and have embarrassed and humiliated her by withholding from her any payment from said rents and profits or assets, although repeated and urgent demands for such payments have been made, and your complainant says that said action has been prompted by a desire to so embarrass your complainant financially as to coerce and force her to agree to some inequitable, unfair and unjust settlement of her rights as a creditor and as the widow of said Daniel Loughran, Jr., deceased—requiring and forcing your complainant to come into this court for equitable relief; that this action has been taken in face of the fact that said estate is abundantly solvent, is indebted for only a small portion of the value of the personal assets thereof, and the real estate and the net rents and profits thereof being free from any debt or claim whatsoever.

XII. Your complainant specifically shows that on May 13, 1932, from information obtained from said defendants, there was due to Daniel Loughran, Jr.'s estate, $2,614.67 as his share of the net rentals of the real estate belonging to Daniel Loughran, Sr.'s estate, and that on said date there had been paid out by said trustees a total of $3,027.11, alleged to be paid on account of the debts of Daniel Loughran, Jr., deceased, one of which items was a payment of $1,605.00, funeral expenses to the firm of Joseph Gawlor, paid under date of December 6, 1931; that another item so paid was the sum of $421.00 paid to General Motors Acceptance Corporation on account of balance due on an automobile owned at his death by said Daniel Loughran, Jr., and by the alleged will and testament of said Daniel Loughran, Jr., now protested by complainant in the Probate Court of the District of Columbia, which by said will was bequeathed to a sister of said defendants, and your complainant says that said payment of said funeral expenses was unauthorized by any proper court, was excessive, was in violation of the rules of the Probate Court, and was a duty and prerogative solely either of administrator, collectors or executor of said estate appointed by said Probate Court, and that the same facts are true as to the payment of a bill for $85.00 for flowers expended at the time of the death of said decedent, without authority of said Probate Court; that likewise certain obligations due, or alleged to be due, by said Daniel Loughran, Jr.,

were improperly paid as follows, to wit: the sum of $45.00 [fol. 9] paid to the defendant Charles Loughran, individually, and other bills which will be more fully made to appear at the hearing hereof.

XIII. Your complainant further shows that on the 14th day of June, 1932, the Probate Court of the District of Columbia, upon petition by your complainant, caused to be appointed as collectors of the estate of said Daniel Loughran, Jr., R. H. McNeill, your complainant's counsel herein, and John Loughran, which said collectors duly qualified as such, and that thereafter prompt request and demand upon said defendants was made by R. H. McNeill, collector, said demand calling upon said defendants to pay over and deliver to said collectors all of the net cash in their hands belonging to the estate of Daniel Loughran, Jr., deceased, amounting to the sum of $3,500.00, as herein alleged, and that said demands have been repeatedly made, but that notwithstanding said demands, no part of said sum has been paid; that likewise your complainant has made repeated demands for payment to her of the amounts due her by the estate of her deceased husband, and of the amounts to which she is entitled, and of her share as the widow of her said deceased husband in the rents and profits from his said real estate, but that notwithstanding said demands she has never received one cent from the defendants, or either of them, nor has one cent been paid by them to said collectors from the rentals collected by said defendants, and that the whole of said sums are still being held by said defendants, less such amounts as have been paid out by them improperly and illegally to alleged creditors of said decedent, Daniel Loughran, Jr. Your complainant further shows that notwithstanding the pendency of this proceeding and the insistence of one of the collectors of said estate, that the defendants pay to said collectors the rents and profits belonging to the estate of Daniel Loughran, Jr., to them, that said defendants have utterly failed to pay any portion of said sums in their hands to said collectors. Copies of said demands are hereto attached and asked to be considered herewith.

XIV. Your complainant says that as the widow of Daniel Loughran, Jr., she is entitled, under the Code of Laws of the District of Columbia, to have and receive as such widow a one-third part of the "net rents, issues and profits" of

[fol. 10] and from all the real estate, or interest in real estate, of which her said deceased husband, Daniel Loughran, Jr., was seized at the time of his death; that no waiver of her said right has been made, nor agreement on her part entered into, inconsistent therewith, and she now asserts her said right to receive "*the one-third part of the net rents and profits thereof,*" as fixed by the Code of Laws of the District of Columbia, and further declares her decision to have and accept said one-third part of said net rents, issues and profits from said real estate, as so granted unto her by the laws of the District of Columbia, and further says that she will not consent to any other method of distribution of said rents and profits, or of any other method of paying or causing to be paid to her the income therefrom, or any commutation of her dower or distributive share in said net rents, issues and profits, and that no other method can legally be asserted by the defendants, except and unless they elect to have all of the real estate of Daniel Loughran, Sr., in which the deceased husband of your complainant had a one-tenth undivided interest at the time of his death, partitioned in kind, or sold in its entirety as provided by Sections 87, 88 and 89 of the Code of Laws of the District of Columbia; that in such case your complainant will be required to receive the moneys apportioned to her under said provision of law, but that pending action of said defendants, or other heirs-at-law of Daniel Loughran, Sr., that she is entitled to receive her one-third portion of the issues, rents and profits from the interest of Daniel Loughran, Jr., in said real estate, and that said defendants cannot legally deny the same, and pending some action by them, or the other heirs-at-law of said Daniel Loughran, Sr., for a partition or sale of said real estate that it is the bounden duty of said defendants to pay over to said collectors the portions of said rents and profits due them as the appointed representatives of the estate of said Daniel Loughran, Jr., and to your complainant the portion thereof due her as the widow of said Daniel Loughran, Jr., and that the repeated persistent and wilful failure of said defendants so to make said payments and the usurpation of the power of the court by said defendants in form and manner herein above alleged requires action by this court for their removal as such trustees and an injunction restraining them from further [fol. 11] collecting and improperly handling and disbursing

said funds, and requires an accounting by said defendants of the funds already received and disbursed by them, and that for the future the equities in your complainant and said collectors requires that a receiver be appointed for the funds now in their hands, and that said receiver be authorized in the future to collect and hold, subject to the order of this court, or the probate court, all funds belonging to the estate of Daniel Loughran, Jr.

Wherefore, being without remedy at law, your complainant prays:

1. That the defendants and each of them answer the exigencies of this bill.

2. That a rule issue out of this honorable court requiring the defendants and each of them to appear and answer herein on a day certain to be named therein, and show cause, if any they have, why they should not be removed and/or restrained and enjoined from acting in the future as trustees or collecting agents of the rents and profits belonging to the estate of Daniel Loughran, Jr., of and from the estate of Daniel Loughran, Sr., deceased, and that they be further ruled to show cause why they should not forthwith pay over to your complainant and to the collectors appointed by the probate court for the estate of Daniel Loughran, Jr., as their respective interests are herein determined, all of the rents and profits by them received, and now held, belonging to the estate of Daniel Loughran, Jr.

3. That for the purposes of enabling this court to properly control and administer the rents and profits belonging to the estate of Daniel Loughran, Jr. that a receiver, or receivers, be appointed by this court with power to receive and hold, and under proper order of this court, disburse to your complainant and the collectors of the estate of Daniel Loughran, Jr., all moneys now in the hands of said defendants belonging to said estate, and with further authority to collect and hold and disburse, under the order of this court, all future monthly rentals due the estate of said Daniel Loughran, Jr., from whatever source the same may be due and payable.

4. That an accounting be required of the defendants as to the rents and profits belonging to the estate of Daniel

Loughran, Jr., by them heretofore received and disbursed, [fol. 12] and for such other and further relief as to the court may seem just and proper.

Ruth Loughran, Complainant.

Duly sworn to by Ruth Loughran. Jurat omitted in printing.

EXHIBIT "A" TO AMENDED BILL

STATE OF FLORIDA,
Columbia County:

To any Minister of the Gospel or other person authorized to solemnize the rite of matrimony, Greeting:

You are hereby authorized to unite Daniel Loughran and Ruth Saffel Daye in the holy bonds of matrimony, should no lawful impediment appear; making due return to this office as the law directs.

Witness my hand and official seal this 16th day of Jan. 1926.

Guy Gillen, County Judge. (Seal.)

STATE OF FLORIDA,
Columbia County:

I hereby certify that I united the above-named parties in Holy Matrimony this 16th day of Jan. 1926.

J. N. Milton, County Judge.

Witness: R. Crawford and M. T. Thrift.

[fol. 13] STATE OF FLORIDA,
County of Columbia:

I, Guy Gillen, as County Judge in and for aforesaid County, do hereby certify that the above and foregoing attached writing is a true and correct copy of a marriage license recorded in the Marriage License Book H, page 5, of the public records of Columbia County.

Witness my hand and official seal at Lake City, Florida, this 18th day of February, 1929.

(Sgd.) Guy Gillen, County Judge. (Seal.)

EXHIBIT "B" TO AMENDED BILL

IN THE CORPORATION COURT OF THE CITY OF ALEXANDRIA, VIRGINIA

In Chancery

DANIEL LOUGHRAN, Complainant,

vs.

RUTH S. LOUGHRAN, Defendant

In Chancery

RUTH S. LOUGHRAN, Cross-complainant,

vs.

DANIEL LOUGHRAN, Cross-defendant

This cause came on again this 8th day of November, 1929, upon the Bill, Answer and Cross-Bill and upon the evidence heretofore duly taken ore tenus before the Court in support of the Bill and in support of the Answer and Cross-Bill and being argued by counsel,

And the court having maturely considered all of the evidence offered in behalf of each of the parties hereto and it appearing to the Court that the Complainant is now and has been for more than one — prior to the institution of this suit an actual and bona fide resident of this State and City and that the Court has the jurisdiction of the parties and the subject matter of this proceeding, and it further appearing to the court that the complainant has failed to sustain the allegations of his Bill the [fol. 14] same is hereby dismissed and the relief therein prayed for denied.

And it further appearing to the Court upon mature consideration of all the evidence that the Defendant and Cross-Complainant has sustained the allegations in her Cross-Bill and that the complainant and Cross-Defendant wilfully, voluntarily and without just cause deserted and abandoned the Defendant and Cross-Complainant on or about the 15th day of January, 1928, and that there is no probability of a reconciliation between them.

It is, therefore, adjudged, ordered and decreed that the said Cross-Complainant, Ruth S. Loughran, be, and she

hereby is, awarded a divorce a mensa et thoro from the Complainant and Cross-Defendant Daniel Loughran.

It is further adjudged, ordered and decreed that commencing on the first day of October, 1929, the said Complainant and Cross-Defendant, Daniel Loughran, shall pay to the said Ruth S. Loughran the sum of Seventy Dollars, ($70.00) per month, payable on the first day of each month thereafter until the further order of the Court herein, and that all alimony unpaid up to the first day of October, 1929, shall be in accordance with the decree heretofore entered herein; and it is further adjudged, ordered and decreed that the said Complainant and Cross-Defendant, Daniel Loughran, shall pay to Moncure, Davis and Budwesky and Austin F. Canfield, Attorneys for the said Ruth S. Loughran, the further sum of Five Hundred Dollars ($500.00) as counsel fees for services to the said Defendant and Cross-Complainant herein.

To which action of the Court in dismissing Complainant's Bill of Complaint and granting the relief prayed for by the Defendant and Cross-Complainant in her Cross-Bill, and in granting the Defendant alimony and counsel fees, Complainant by counsel excepted.

And it being suggested by Counsel for the original Complainant that it is the purpose of said original complainant to apply for an appeal from this decree to the Supreme Court of Appeals of Virginia, the operation of this decree is hereby suspended for a period of sixty days, providing Complainant within ten days of the entry of this order give bond in the sum of One Thousand Dollars, with surety to be approved by the Clerk of this Court, conditioned as the law directs.

[fol. 15] Copy

Robert H. McNeill, Investment Bldg., Washington, D. C.

May 14, 1932.

Messrs. John Loughran, Joseph Loughran, and Charles Loughran, trustees estate of Daniel Loughran, deceased, Washington, D. C.

In re Estate Daniel Loughran

GENTLEMEN:—As collectors for the estate of Daniel Loughran, we hereby request an accounting of all rents and

profits of said estate belonging to Daniel Loughran, together with check for the amount accrued and due said estate.

We make this request by reason of our appointment as collectors to said estate by Mr. Justice Bailey by order of court May 3, 1932.

This confirms oral request made to Mr. John Loughran by telephone by Mr. McNeill on Thursday of this week, May 12th. Will you also please release to us possession of one Buick automobile, 1931 model and jewelry belonging to said estate of Daniel Loughran.

In giving an account for the rents and profits please advise what has been accumulated, and what money was on hand and belonging to said estate at the time of the death of Daniel Loughran, and what has accrued since.

Very truly yours, (Sgd.) R. H. McNeill.

RHMcN.:EA.

Copy

Robert H. McNeill, Investment Bldg., Washington, D. C.

May 24, 1932.

Mr. William E. Leahy, Investment Building, Washington, D. C.

In re Estate Daniel Loughran

DEAR MR. LEAHY: You have in your file copy of a statement of account of Mrs. Ruth Loughran against the Daniel Loughran estate showing due her by her contentions $2436.66.

[fol. 16] I think she is presently entitled to receive the amount of accrued rents since Daniel Loughran's death, and that she should also receive the accrued alimony admittedly due.

Rather than have me file a petition in the Court authorizing the payment of these amounts or substantial portions thereof, would you not be willing to recommend to John Loughran that a payment of these sums be made, so that we will not have any controversy about them in court?

May I also ask you to have Mr. John Loughran submit to the Collectors, him and myself, a detailed statement of the following:

1. Accrued rents belonging to Daniel Loughran at the time of his death.

2. Gross rents received and belonging to him since his death, less itemized deductions.

Then a check could be drawn by Mr. John Loughran and the other trustees, to John Loughran and myself, as Collectors, for the amount due Daniel Loughran's estate.

Also please advise what you think should be done as to the payment of the note at the Liberty National Bank.

I feel that we should have an immediate conference about this whole matter so that we can agree in detail on the above points and dispose of them without taking a great deal of time.

Very truly yours, (Sgd.) R. H. McNeill.

R.H.McN:EA.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

RULE TO SHOW CAUSE—Filed August 29, 1932

This cause coming on to be heard upon the Amended Bill of Complaint and exhibits herein filed, it is now on motion of the attorney for the complainant, by the court, this 29th day of August, 1932.

Ordered that the defendants and each of them appear herein and show cause on or before the 7th day of September, 1932, why they should not be removed and/or restrained and enjoined from acting in the future as such trustees or collecting agents of the rents and profits belonging to the estate of Daniel Loughran, Jr., and why they [fol. 17] should not be required forthwith to pay over to Ruth Loughran, complainant herein, and/or to R. H. McNeill and John Loughran, as collectors of the estate of Daniel Loughran, Jr., all of the rents and profits due said estate, collected by them from an undivided interest of said Daniel Loughran, Jr., in real estate holdings belonging to the estate of Daniel Loughran, Sr., as their rights are determined by this Court herein.

Said defendants are further required to show cause, if any they have, on the date above stated, why a receiver,

or receivers, should not be appointed by this court with power to collect and hold and disburse, by order of this court, all moneys now in the hands of said defendants belonging to the estate of Daniel Loughran, Jr., as well as all future monthly rentals belonging to said estate from whatever source the same may be due and payable, and further why said defendants should not be required to render herein a full accounting of their administration as trustees and collecting agents of the rents and profits due the estate of Daniel Loughran, Jr., of and from the real estate holdings of the estate of Daniel Loughran, Sr., or from any other source.

Provided, a copy of this Order shall be served upon said defendants on or before 1st day of September, 1932.

Daniel W. O'Donoghue, Justice.

MARSHAL'S RETURNS

Served a copy of the above rule on John Loughran 8-30-32 personally.

Edgar C. Snyder, U. S. Marshal in and for the Dist. of Columbia, by W. J. Roberts, B., Deputy U. S. Marshal.

Within named Joseph Loughran, Charles Loughran each not to be found 9-7-32.

Edgar C. Snyder, U. S. Marshal in and for the District of Columbia, by W. J. Roberts, Deputy U. S. Marshal.

[fol. 18] IN SUPREME COURT OF DISTRICT OF COLUMBIA

JOINT AND SEVERAL RETURN TO RULE TO SHOW CAUSE—Filed September 7, 1932

John Loughran, Joseph Loughran, and Charles Loughran, respondents to rule to show cause issued herein, reserving to themselves all objections and exceptions by way of motion to dismiss or otherwise to the Bill of Complaint herein, for return to the rule to show cause heretofore issued upon said Bill of Complaint, respectfully state as follows:

1. They are without knowledge as to the residence of complainant and to her citizenship as alleged in paragraph 1 of her bill.

2. These respondents admit that they are each a citizen of the United States and resident of the District of Columbia and as to the remaining allegations of said paragraph they are advised no answer is required of them.

3. These respondents are without knowledge as to the removal of the complainant from the District of Columbia and her home and residence in the State of Florida, also as to the fact and date of her marriage to Daniel Loughran, Jr., all as in this paragraph averred. They admit that the complainant was divorced absolutely from her husband, but advise the court that it was he, her husband, Henry Daye, who obtained an absolute divorce from this complainant in this court holding an equity court because of her adultery committed with Daniel Loughran, Jr. That Daniel Loughran, Jr. was named the co-respondent in said cause in this court and the court entered its decree for complainant's then husband and against her upon the ground of adultery having been found by this court with the co-respondent, Daniel Loughran, Jr., as hereinbefore set out.

4. These defendants are without knowledge as to the allegations of fact set forth in this paragraph of complainant's bill.

5. These respondents are advised the allegations of this paragraph are argumentative and but conclusions of law, requiring no answer from them.

6. Answering so much of this paragraph as alleges facts, these respondents admit the death of their father, Daniel Loughran, Sr., as alleged, and that he left as his heirs-at-[fol. 19] law those mentioned in said paragraph with the exception of Donald Carter, who was not the heir-at-law of Daniel Loughran, Sr. at the time of his death. They admit that the said Daniel Loughran, Sr., died seized of valuable real estate in the District of Columbia, to a large extent rented and producing large revenues, as averred. They deny the remaining allegations of said paragraph as being conclusions of law and contrary to the terms of the last will and testament of Daniel Loughran, Sr., which has been admitted to probate in this court, and reference

thereto is hereby made and incorporated herein as if herein fully set out. They aver the fact to be that by the said last will and testament of the said Daniel Loughran, Sr., he devised and bequeathed all the rest and residue of his estate, real, personal and mixed, after specific bequests thereinbefore bequeathed, to his wife, Mary Loughran for and during her life, and after her death to these three respondents and their brother, as trustees in trust for the use and benefit of the ten children of the said testator until the youngest of his said children should attain the age of twenty-five years, with full power to receive and collect the rents, issues and profits from said estate and to pay all proper taxes, insurance, charges and expenses against said estate, and to divide the net proceeds and income from said estate semi-annually and equally among the said ten children; that upon the youngest of his said children attaining the age of twenty-five years, then his said estate to vest in ten equal shares, one share in fee simple to each of nine of said ten children, and the remaining one-tenth to these three respondents and their brother Leo, as trustees, in trust for Mrs. Mary Loughran Duke, a daughter of said testator, for her said use and benefit for and during her life, with full power in said trustees to invest said share or the net proceeds or principal thereof in improved real estate or loans on improved real estate situate in the District of Columbia; to receive and collect the rents, issues and profits from said share or estate and to pay all proper taxes, insurance, charges and expenses against said share or estate and to pay over the net proceeds and income from said share or estate to his said daughter, Mary Loughran Duke, as aforesaid, for her sole use and benefit during her life, and after her death said share was to vest in fee simple, share and share alike in any child or children of [fol. 20] said Mary Loughran Duke, their heirs and assigns. They further aver that their brother, Leo Loughran, is now deceased and that the youngest child of their father, Daniel Loughran, Sr., for some years last past attained the age of twenty-five years, so that the sole authority vested in these respondents as trustees, under the said last will and testament of Daniel Loughran, Sr., is with respect to the one-tenth equal share in said estate devised to them as trustees for and during the life of their sister, Mrs. Mary Loughran Duke, and upon her death that

trust terminates by, under and in accordance with the terms of the said last will of Daniel Loughran, Sr., aforesaid. They further aver that upon the happening of the event of the youngest child having attained the age of twenty-five years all of the heirs-at-law of Daniel Loughran, Sr., by mutual consent entered into an agreement in writing wherein and whereby all of said heirs-at-law agreed among themselves and each with the other, that the residue of the estate of Daniel Loughran, Sr., which theretofore had vested as to an equal one-tenth share thereof in nine of said heirs-at-law and the remaining one-tenth in these respondents and their brother Leo Loughran, as trustees for their sister, Mary Loughran Duke, as hereinbefore set out, should be held intact and not distributed by way of partition, sale or otherwise, each and all of said heirs-at-law being convinced that it was an unfavorable market upon which to place real estate in order to convert the same into cash for purposes of distribution, and therefore they entered into the agreement hereinbefore mentioned under which they conferred upon these three respondents and their brother Leo Loughran full power and authority to manage and control the said properties, representing the residue of the said estate of Daniel Loughran, Sr., and which had become vested in them, as hereinbefore set out. That having particular confidence in the integrity and ability of these three respondents and their brother, the said heirs-at-law aforesaid, have operated under said agreement aforesaid in the management and control of said real estate vested in these three respondents alone since the death of their brother, Leo, and that said agreement is still binding and in full force and effect. While admitting, therefore, that they are managing said estate without authority from the last will and testament of Daniel Loughran, Sr., they deny that they are voluntary trustees, [fol. 21] do son tort, in the collection of rents and the management of the real estate, hereinbefore set out, but aver the fact to be that they have acted strictly in accordance with the terms of the agreement by, under and in accordance with which each and all of the heirs-at-law of Daniel Loughran, Sr., voluntarily entered into the said agreement under which these three respondents have been managing and controlling the said real estate aforesaid, for several years last past.

7. These respondents admit that they have been collecting the rents and profits of said real estate, but aver that their collection of rents and management of said properties is strictly in accordance with the agreement in paragraph 6 hereof described.

8. These respondents admit that Daniel Loughran, Jr., died leaving a last will and testament which was duly filed in the probate branch of this Honorable Court and that a protest to the probate of said last will and testament was presented attacking the jurisdiction of this court over the estate of Daniel Loughran, Jr., by bringing in question the domicile of said Daniel Loughran, Jr., at the time of his death. These respondents further aver that it was this complainant who filed said protest; that in the probate branch of this Honorable Court she is now attacking the jurisdiction of this court over this estate and at the same time filing this her Bill of Complaint in this court appealing to it to exercise its jurisdiction over said estate.

9. These respondents are without knowledge as to the averments of this paragraph, but admit that this complainant has filed a claim as a creditor of the estate of Daniel Loughran, Jr. in the probate branch of this court.

10. These respondents deny that they have been collecting any rents and profits of the real estate of Daniel Loughran, Sr., aforesaid, and aver the fact to be that they are collecting the rents and profits belonging to the heirs-at-law and devisees under the last will and testament of Daniel Loughran, Sr. That the estate has long since vested, as hereinbefore set forth, and that the estate of Daniel Loughran, Sr., has long since been closed. Any rents and profits, therefore, collected by them were rents and profits belonging to the heirs-at-law and devisees under the last will and testament of Daniel Loughran, Sr., who were his [fol. 22] ten children, who entered into the agreement hereinbefore in paragraph 6 of this return described. Whatever sums collected by these respondents either have been or can be accounted for easily, strictly, and with full accuracy, and that they, as trustees, are ready and willing at any time to pay over whatever sum may be found to be due the estate of Daniel Loughran, Jr., upon a proper showing of the amount and basis of said indebtedness.

These respondents are advised that this complainant has no authority whatsoever to question their conduct of the collection of the rents and profits or the payment thereof insofar as the estate of Daniel Loughran, Jr. is concerned. They aver the fact to be that collectors have been appointed by this Honorable Court to conserve the assets of this estate, and that any question involving the failure of these respondents to pay over to said estate any sum or sums alleged to be due it is one to be raised by the collectors of this estate and not this complainant. They admit that no money has been paid by them to this complainant for the reason that the said complainant has stubbornly refused to take any position with reference to her assignment of dower. That these respondents went to considerable trouble and expense to have the properties belonging to the heirs-at-law and devisees of Daniel Loughran, Sr., appraised by a competent real estate appraiser in the District of Columbia in order to advise this complainant and inform her as to the approximate value of the interest of Daniel Loughran, Jr., so that she might be advised with regard to her assertion of her right to dower in the estate of Daniel Loughran, Jr. That said complainant has consistently up to the present maintained an exaggerated and excessive valuation upon what she considers to be her dower interest in said estate and has attempted to coerce these respondents into paying her a sum of from Thirty to Fifty Thousand Dollars by way of settlement of her dower right and in attempting to accomplish that purpose has filed her protest to the probate of the last will and testament of Daniel Loughran, Jr., as hereinbefore set out, questioning the jurisdiction of this court over said estate, and then instituting this action in which she claims as her dower interest one-third of the net rents and profits, although she has constantly refused to proceed by, under and in accord-
[fol. 23] ance with the Code of Law in full force and effect in this District with regard to the assignment of dower to any widow entitled thereto. These respondents deny emphatically that they have embarrassed or humiliated this complainant by withholding payment from the rents and profits of the estate of Daniel Loughran, Jr. They deny that they have been prompted by any desire to embarrass this complainant so as to coerce her to agree to some inequitable, unfair and unjust settlement of her rights as a

creditor and as the widow of Daniel Loughran, Jr., deceased. They aver as respondents in this cause they have no interest or authority to question the right of any creditor of the estate of Daniel Loughran, Jr., but aver that at this time they are without security in paying over any portion of the funds belonging to the estate of Daniel Loughran, Jr. to this complainant, as they have neither the order of this Honorable Court to protect them, nor any other instrument in writing by way of agreement or otherwise by which this complainant is bound and obligated and under which if this complainant is entitled to payment from the estate of Daniel Loughran, Jr., these respondents would be protected in making the same from subsequent demands either of the collectors of the estate of Daniel Loughran, Jr., or the claims of this complainant should she later change her position from that assumed in her Bill of Complaint now filed. They further aver that they have never attempted to coerce this complainant or to deny her whatever right she has in the estate of Daniel Loughran, Jr., and when, if and as her said rights are determined they state they are ready and willing to accord them to her to the fullest extent.

12. These respondents are advised that this complainant is without right to assert complaint against them in reference to matters and things alleged in this paragraph. That if, as therein averred, they have wrongfully paid the debts of the estate of Daniel Loughran, Jr., then complaint in that regard should come not from this complainant, but from the collectors of the estate of Daniel Loughran, Jr., aforesaid. They further aver that the said paragraph is argumentative and filled with legal conclusions requiring no further answer from them.

[fol. 24] 13. These respondents make the same reply to the allegations of fact contained in this paragraph that they made in paragraph 12 herein. They make the same reply as hereinbefore made with reference to the demands of this complainant for money to be paid over to her by them, that they are without security and protection in paying this complainant any monies from the estate of Daniel Loughran, Jr., unless and until this complainant has had her dower assigned to her by this Honorable Court in accordance with the law in force, and that when this Honorable Court has determined that question then they are

ready, willing and able to comply fully with the order of the court.

14. These respondents are advised that the averments of this paragraph are entirely legal conclusions requiring no answer from them.

15. And further answering, these respondents say that the rest and residue of the estate of Daniel Loughran, Sr., of which he died seized and possessed and which vested in the ten heirs-at-law and devisees of the said Daniel Loughran, Sr., consisted almost exclusively of real estate holdings in the District of Columbia which were rented and producing properties. That this complainant has never made any attempt to have her dower in this estate assigned. That at the present time this Honorable Court and these respondents are unadvised as to whether the dower of this complainant, if she is entitled thereto, could not be assigned to her by metes and bounds, and that until that question has been determined this complainant is in no position to make application to this Honorable Court for assignment of her dower in the net rents and profits of the estate of Daniel Loughran, Jr. They further aver that she has neither legal right nor equity in her present position with regard to the matters and things complained of in her said Bill of Complaint for the purpose of obtaining the unusual and extraordinary relief sought in the prayers of her amended bill. They aver that prior to her marriage, as alleged, to Daniel Loughran, Jr., she was and had been for some years theretofore the lawful wife of one Henry Daye and that he, as the husband of this complainant, then known as Ruth Daye, filed in this court on the equity side thereof, his petition for an absolute divorce from this complainant, in Equity cause No. 43202. They make part of this their answer to this Bill of Complaint the [fol. 25] petition, answer and decree in said cause aforesaid as if fully set out and respectfully ask this Honorable Court to judicially notice this cause in support of this their answer. They further say that in this cause Daniel Loughran, Jr., was named co-respondent and that on December 12, 1924 this Court, acting through Mr. Justice A. A. Hoehling, decreed a final and absolute divorce to Henry Daye against and from his then wife and this complainant, Ruth Daye, by reason of her adultery with the co-respondent Daniel Loughran, Jr., as alleged in the bill of complaint filed in that

cause. They further aver that by, under and in accordance with Section 966 of the Code of Laws of the District of Columbia this complainant was denied the right of re-marriage. They state, however, that said complainant directly contrary to and in violation of the terms of this statute married Daniel Loughran, Jr., the co-respondent in the proceedings hereinbefore named. They allege that, having openly and in utter disregard of the prohibition contained in said statute violated the terms thereof, she cannot now return to this jurisdiction and this Honorable Court and herein make application for relief with respect to the very situation and relationship which she could and did create only in direct violation of the prohibitory mandate of the statute hereinbefore mentioned in full force and effect in this District and which this Honorable Court is bound to respect and administer. That the declaration by the Congress of the United States in Section 966 was a legislative declaration of a general public policy to govern in this District and which should govern and control the conduct of those found guilty of adultery in the courts thereof. They say, therefore, that this complainant is without right to ask or expect to receive from the courts of this jurisdiction, and especially in equity, the extraordinary relief and assistance which she prays in her said amended bill, and that she should be left with respect to that situation and relationship, which she created by violation of the law of this District, where her own misconduct in violating said law has placed her.

16. These respondents further allege that the said amended bill of complaint should not be entertained by this Honorable Court for the reason that upon hearing the Mo- [fol. 26] tion to Dismiss her original Bill of Complainant herein the said Bill was ordered dismissed, with leave granted *in* said complainant to file an amended bill within ten days thereafter. The order of this Honorable Court was signed on the 17th day of August, 1932, and this Amended Bill was not filed until the 29th day of August, 1932.

Wherefore the premises considered, respondents submit that the rule heretofore issued in this cause should be dismissed.

John Loughran, Joseph Loughran, Charles Loughran, William E. Leahy, Attorney for Respondents.

Duly sworn to by John Loughran. Jurat omitted in printing.

In Supreme Court of District of Columbia

Order Discharging Rule—Filed September 17, 1932

This cause coming on to be heard upon the rule to show cause issued upon the amended bill filed by the complainant herein, and the joint and several answer of the respondents to said rule, it is, by the Court, this 17th day of September, 1932,

Ordered that the said rule to show cause be and the same is hereby discharged without prejudice.

Jennings Bailey, Justic.

[fol. 27] In Supreme Court of District of Columbia

Stipulation Adopting Answer to Rule as Answer to Bill —Filed September 17, 1932

Now come the parties hereto, by their attorneys, as evidenced by their signatures subscribed hereto, and stipulate that the joint and several answer of the respondents to the rule to show cause issued upon the amended bill filed by the complainant herein may be adopted by the respondents herein as and for their joint and several answer to said amended bill, and that the said answer to said rule hereinbefore mentioned may stand as the joint and several answer of the said respondents to the amended bill herein.

Robert H. McNeill, Attorney for Complainant. William E. Leahy, Attorney for Respondents.

In Supreme Court of District of Columbia

Motion to Set Down Cause for Hearing on Bill and Answer—Filed September 17, 1932

Now comes the complainant, by her attorney, and moves the Court to set this cause for hearing on Bill and Answer.

Robert H. McNeill, Attorney for Complainant.

IN SUPREME CUORT OF DISTRICT OF COLUMBIA

DECREE—Filed September 17, 1932

This cause coming on to be heard upon the Amended Bill of Complaint, Rule to Show Cause issued herein, the Answer to the Rule to Show Cause, and the Answer to said Amended Bill of Complaint, and the same being considered, and counsel being heard, and it appearing to the satisfaction of the Court that the complainant herein is the widow of Daniel Loughran, Jr., deceased, and that [fol. 28] said Daniel Loughran, Jr., deceased, at the time of his death was seized and possessed of a one-tenth (1/10) undivided interest in the real estate belonging to Daniel Loughran, Sr., deceased, his father, and that there has accrued to the estate of said Daniel Loughran, Jr., deceased, and to his widow, the complainant herein, the sum of Three Thousand, Eight Hundred, Fourteen and 67/100 Dollars, ($3,814.67), from the net rents, issues and profits of and from said real estate and interest in the same, and that the complainant herein, under the laws of the District of Columbia, is entitled to a "one-third part of the net rents and profits" so accrued and due, and said complainant in open court, by her attorney of record, appearing and electing to take and receive, in lieu of other provisions for the allotment and setting apart to her of her dower interest in the real estate of her said deceased husband Daniel Loughran, Jr., said third of said net rents and profits, so accrued, it is now, by the Court, this 17th day of September, 1932,

Ordered, adjudged, and decreed that the defendants herein pay to the complainant the sum of One thousand, two hundred seventy-one and 55/100 Dollars ($1,271.55), as accrued rents, issues and profits due her as the widow of said Daniel Loughran, Jr., deceased, as her share of the net rents, issues and profits of and from the one-tenth (1/10) interest of said Daniel Loughran, Jr., in the real estate and the rents and profits thereof belonging to him, and of which he was seized and possessed at the time of his death, same being a one-tenth (1/10) undivided interest in the real estate holdings of his deceased father, Daniel Loughran, Sr., deceased, as set out in the Amended Bill of Complaint and admitted in the answer, said sum being the accrued rentals admitted by the defendants herein

to be due said complainant up to September 1, 1932; and it is further

Ordered, adjudged, and decreed that from and after September 1, 1932, said defendants are directed to pay monthly to said complainant, or her attorney of record, on or before the tenth day of each month a full one-third (⅓) of the net rents, issues and profits collected by them from the real estate interests belonging to the estate of Daniel Loughran, Jr., deceased, of which he was seized and possessed at the [fol. 29] time of his death, as set out in said Amended Bill of Complaint.

Jennings Bailey, Justice.

I consent as to form.

William E. Leahy, Attorney for Defendants.

From the above decree the defendants in open Court note an appeal to the Court of Appeals of the District of Columbia and thereupon the Court fixed the amount of the Cost bond on appeal at $50.00 Cash or an undertaking with good and sufficient surety in the sum of $100.00 and the amount of the supersedeas herein in the sum of twenty-five hundred dollars.

Jennings Bailey, Justice.

MEMORANDUM

September 26, 1932.—Supersedeas Bond ($2,500) approved and filed.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ASSIGNMENT OF ERRORS—Filed October 4, 1932

It is respectfully submitted that in signing the decree of September 17, 1932, the trial court erred and the following errors are assigned upon this appeal as errors committed by the presiding Judge in the Supreme Court of the District of Columbia upon the hearing of this cause:

1. The Court erred in signing the decree dated September 17, 1932.

2. The Court erred in not holding it matter of law that the complainant herein was without equity to entitle her to the relief sought.

3. The Court erred in not holding that the complainant herein, as matter of law, was without right to seek the aid of this Court holding an Equity Court in the matter of the relief prayed in her petition.

4. The Court erred in assigning to the complainant dower in the net rents, issues and profits of the interest of which [fol. 30] Daniel Loughran, Junior, died seized and possessed in the estate of his father, Daniel Loughran, Senior.

5. The Court erred in not denying to the complainant in the Supreme Court of the District of Columbia, holding an Equity Court, any relief in the matter of dower as prayed.

6. The Court erred in not holding, as matter of law, that the said complainant was without equity in seeking relief from the Supreme Court of the District of Columbia, holding an Equity Court, for the reason that she had violated the mandate of Section 966 of the Code of Laws for the District of Columbia.

7. The Court erred in not holding that the said complainant was barred from seeking relief in the Supreme Court of the District of Columbia, holding an Equity Court, when it appeared upon the face of the bill and answer thereto that she had remarried Daniel Loughran, Junior, in violation of the mandate of Section 966 of the said Code of Laws for the District of Columbia aforesaid.

William E. Leahy, Attorney for Defendants.

Service of the foregoing acknowledged this 4th day of October, 1932.

Robert H. McNeill, by Geo. H. McNeill, Attorney for Complainant.

In Supreme Court of District of Columbia

Designation of Record—Filed October 4, 1932

The defendants having perfected an appeal herein to the Court of Appeals of the District of Columbia on the 17th

day of September, 1932, hereby request the Clerk of the Supreme Court of the District of Columbia to prepare, at defendants' expense, a transcript of the record on appeal, including therein the following papers and proceedings, namely:

1. The amended bill;
2. The Rule to show cause.
3. The answer to the rule.
4. The order dismissing the rule.
5. The stipulation allowing answer to rule to stand as answer to amended bill.

[fol. 31] 6. The motion setting case down on bill and answer for hearing.

7. Decree, September 17, 1932.
8. Memo.—appeal noted in open court, September 17, 1932.
9. Memo.—cost and supersedeas bond filed, September 26, 1932.
10. Assignment of errors.
11. Together with a copy of this designation.

William E. Leahy, Attorney for Defendants.

Service of foregoing acknowledged this 4th day of October, 1932.

Robert H. McNeill, by Geo. H. McNeill, Attorney for Complainant.

Clerk's certificate to foregoing transcript omitted in printing.

Thursday, June 8th, A. D. 1933.

No. 5868

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Appellants,

vs.

RUTH LOUGHRAN

The argument in the above entitled cause was commenced by Mr. James F. Reilly, attorney for the appellants, and was continued by Mr. R. H. McNeill, attorney for the appellee, and was concluded by Mr. James F. Reilly, attorney for the appellants.

(Mr. Justice Robb not sitting.)

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5868

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Appellants,

v.

RUTH LOUGHRAN

Appeal from the Supreme Court of the District of Columbia

(Argued June 8, 1933. Decided June 26, 1933)

W. E. Leahy, James F. Reilly, of Washington, D. C., for appellants.

R. H. McNeill, George H. McNeill, of Washington, D. C., for appellee.

Before Martin, Chief Justice; Van Orsdel, Hitz, and Groner, Associate Justices

VAN ORSDEL, Associate Justice:

This suit was brought in the Supreme Court of the District of Columbia by appellee, plaintiff below, to recover her

dower interest in the rents, issues, and profits in the estate of her deceased husband, Daniel Loughran, Jr. The suit was against the trustees of the estate of Daniel Loughran, Sr., the father of Daniel Loughran, Jr. The case was heard upon amended bill and answer, and a decree entered for plaintiff, from which defendants appeal.

It appears that plaintiff married Henry Daye, who obtained a decree of absolute divorce from her in the Supreme Court of the District of Columbia December 12, 1924, on the ground of adultery, the corespondent in that proceeding being Daniel Loughran, Jr. Later plaintiff and Daniel Loughran, Jr., were married in Florida on January 16, 1926. In July, 1927, Daniel Loughran, Jr., filed a suit for divorce from plaintiff in the Corporation Court of Alexandria, Virginia. Plaintiff filed a cross bill, and on November 8, 1929, the prayers of the cross bill were granted and plaintiff was given a divorce a mensa et thoro from Daniel Loughran, Jr., with alimony at the rate of $70.00 a month. Thereafter, Daniel Loughran, Jr., took up his residence in the District of Columbia, where he died on September 6, 1931, leaving a last will and testament, which was filed for probate in the Supreme Court of the District of Columbia. Plaintiff protested the probate of the will on the ground that this was not the domicile of the deceased. Collectors were appointed pending the disposition of the plaintiff's protest in the probate court.

The single question for determination here is, whether or not the plaintiff is entitled to her dower interest in the estate of Daniel Loughran, Jr. We are of opinion that the decree of absolute divorce obtained by her first husband, Daye, on the ground of adultery bars the right of plaintiff to recover in this action. Section 966, D. C. Code, provides as follows: "A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: Provided, That in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other."

It is unnecessary for us to concern ourselves with the legality of the Florida marriage in that State, or with the subsequent divorce proceedings in the State of Virginia, since the disposition of the case is dependent entirely upon the law of the District of Columbia. Insofar as the law of

the District is concerned, the marriage between plaintiff and Daniel Loughran, Jr., in Florida, if performed in the District of Columbia, would be absolutely void, and the plaintiff, being the offending party against the law of the District, is in no position to enforce any claim against the estate of Daniel Loughran, Jr., growing out of the marriage in Florida.

The case of Olverson v. Olverson (293 Fed. 1015; 54 App. D. C. 48), is decisive of the issue here involved. In that case the wife had been held guilty of adultery in a divorce suit in which she was defendant in the Supreme Court of the District of Columbia. Thereafter she married Olverson in Baltimore. They returned and took up their residence here. The guilty wife brought suit in the District for alimony against the husband she had married in Baltimore. Without regard to the question of the legality of the marriage in Maryland under the Maryland law, this court in denying relief said:

"We do not think that the courts of the District can be used for that purpose. The appellant deliberately set at naught a District statute, which she was bound to respect and obey, and she cannot now ask the courts of this jurisdiction to relieve her of the obligations of a relation which she wilfully and wrongfully assumed, or to enforce the right to support which would have been hers had the relation been lawfully contracted in the District. It is the special duty of courts to discourage infractions of the laws and fixed policies of the particular division of the national domain to which they are accredited, and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts without bringing such laws and policies into contempt. Jurisdictional tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction. * * * We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of section 966, should not be permitted to take advantage of his or her wrong, and should be left as found in the relation unlawfully undertaken."

This opinion is supported by overwhelming authority, and is in every respect decisive of the present case. It is unnecessary to waste time in considering the doctrine of

"clean hands" as applicable to this case. Plaintiff, by her own unlawful conduct has placed herself without the pale of the law, and cannot be heard in a court of equity to take advantage of her own wrong.

The decree of the court below is reversed with costs, and the cause remanded for further proceedings not inconsistent with this opinion.

Josiah A. Van Orsdel, Associate Justice.

A true copy. Teste:

——, Clerk Court of Appeals, D. C.

Monday, June 26th, A. D. 1933.

No. 5868, April Term, 1933

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Appellants,

vs.

RUTH LOUGHRAN

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice Van Orsdel, June 26, 1933.

Mr. Justice Robb took no part in the consideration or decision of this case.

MEMORANDUM

July 10, 1933.—Petition for Rehearing and Stay of Mandate filed.

Tuesday, August 8th, A. D. 1933.

No. 5868

JOHN LOUGHRAN et al., Appellants,

vs.

RUTH LOUGHRAN

On consideration of the petition for rehearing and stay of mandate filed herein, it is ordered that a rehearing be and it hereby is denied, and it is further ordered that the mandate be and it hereby is stayed for 30 days from today under Rule 24.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1933

No. 5868

JOHN LOUGHRAN, JOSEPH LOUGHRAN, and CHARLES LOUGHRAN, Trustees of the Estate of Daniel Loughran, Sr., Appellants,

vs.

RUTH LOUGHRAN, Appellee

DESIGNATION OF RECORD

The Clerk of the Court of Appeals of the District of Columbia, in the preparation of the transcript of record on petition for certiorari of the above case to the Supreme Court of the United States, will include the following papers, namely:

1. Transcript of Record.
2. Memorandum of Argument.
3. Opinion of the Court of Appeals.
4. Memorandum of filing Petition for Rehearing.

5. Order denying rehearing.
6. Judgment.
7. This designation.
8. Clerk's certificate.

McNeill & McNeill, by Robert H. McNeill, 705 Investment Bldg., Attorney for Appellee, Ruth Loughran.

Endorsed: 5868. John Loughran et al., Appellants, vs. Ruth Loughran. Designation of Record. Court of Appeals, District of Columbia. Filed September 8, 1933. Henry W. Hodges, Clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 39, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of John Loughran, Joseph Loughran, and Charles Loughran, Trustees of the Estate of Daniel Loughran, Sr., Appellants, vs. Ruth Loughran, No. 5868, April Term, 1933, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 8th day of September, A. D. 1933.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

[fol. 41] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 4, 1933

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,168. District of Columbia Court of Appeals. Term No. 565. Ruth Loughran, Petitioner, vs. John Loughran, Joseph Loughran and Charles Loughran, Trustees of the Estate of Daniel Loughran, Sr. Petition for a writ of certiorari and exhibit thereto. Filed October 31, 1933. File No. 565, O. T., 1933.

FILE COPY

Office Supreme Court, U.S.
FILED
OCT 31 1933
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 565

RUTH LOUGHRAN,
Petitioner

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN and CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,
Respondents

Petition for Writ of Certiorari to the Court of Appeals of the District of Columbia

ROBERT H. MCNEILL,
Attorney for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No.——

RUTH LOUGHRAN,
Petitioner

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN and CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,
Respondents

Petition for Writ of Certiorari to the Court of Appeals of the District of Columbia

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To the Honorable Charles Evans Hughes, Chief Justice of the Supreme Court of the United States, and to the Associate Justices of the Supreme Court of the United States:

PART I

Statement of the Case

Petitioner herein deeming herself aggrieved by the decision of the Court of Appeals of the District of Co-

lumbia in a case in which she was the appellee, and John Loughran, Joseph Loughran and Charles Loughran, Trustees of the estate of Daniel Loughran, Sr., were appellants, rendered June 26, 1933 (rehearing denied August 8, 1933), respectfully petitions your Honorable Court to grant a Writ of Certiorari for a review of said decision and judgment, and for the reasons why such writ of certiorari should be granted respectfully shows the following:

Your petitioner, Ruth Loughran, on January 16, 1926, after being domiciled in the State of Florida for more than a year, married Daniel Loughran, Jr., one of ten of the children of Daniel Loughran, Sr., said Daniel Loughran, Sr., having previously died while domiciled in the District of Columbia, leaving surviving him the three respondents herein, his sons, and seven other children or descendants of children, inclusive of said Daniel Loughran, Jr., husband of petitioner. After her marriage in Florida to said Daniel Loughran, Jr., petitioner and her husband resided in said State for about one year and then removed to Virginia, where they acquired a new domicile, and where, said Daniel Loughran, Jr., as husband of petitioner, filed a suit for absolute divorce from petitioner in the Corporation Court of the City of Alexandria, Virginia, alleging that both parties were *domiciled* in said State. A cross-bill was filed by petitioner to said proceeding, and on November 8, 1929, the prayers of the cross-bill were granted, petitioner herein was granted a divorce *a mensa et thoro* from her husband, with alimony, which alimony was paid with reasonable regularity at the rate of Seventy Dollars ($70.00) per month until the death of Daniel Loughran, Jr., petitioner's husband, on September 6, 1931. On the death

of said Daniel Loughran, Jr., his alleged last will and testament was filed with the Probate Branch of the Supreme Court of the District of Columbia for probate. Petition for said probate set out the death of said Daniel Loughran, Jr., and the fact that he was possessed of certain real estate and personal property in the District of Columbia, subject to administration by said Court. Petitioner herein filed a protest to the probate of the last will and testament on the grounds that the domicile of decedent was in the State of Virginia at the time of his death, and also that he did not have sufficient mental capacity with which to make a valid will. Whereupon collectors were appointed by the Probate Court who took charge of the assets of said estate.

Upon the death of the father of petitioner's husband, Daniel Loughran, Sr., in 1917, the respondents herein, three of his sons, were appointed trustees under his will and vested with the authority to collect the income from the valuable holdings of real estate, of which he died possessed, worth approximately One Million Dollars ($1,000,000.00), the income from said real estate to be distributed by the respondents herein in accordance with the rights accruing to the heirs of said decedent Daniel Loughran, Sr., father of petitioner's husband, Daniel Loughran, Jr.; that said respondents, acting as such trustees, did collect and distribute the income from said properties up to and including the date of the death of petitioner's husband, Daniel Loughran, Jr., in 1931.

Subsequent to the death of her husband, Daniel Loughran, Jr., and to the appointment of collectors of his said estate, petitioner herein brought her Original Bill of Complaint (R p 2) in the Equity Court of the

District of Columbia, Equity No. 54,647, praying that said Court would require the respondents herein to pay to her, monthly, one-third of the net rentals accruing from the interests of her deceased husband in the real estate of his father, Daniel Loughran, Sr., of which said respondents were trustees, and the rents and profits of which they were charged with collecting and distributing, said bill showing her domicile and marriage in the State of Florida, her subsequent domicile and limited divorce on her cross-bill against her husband in the State of Virginia, and the fact that she was the widow of said decedent, Daniel Loughran, Jr., and entitled to statutory distributive rights as his widow.

An answer to the Complaint filed by petitioner herein in said Equity Court was duly made by said respondents, said answer setting out among other things, that prior to her marriage to her deceased husband, Daniel Loughran, Jr., petitioner herein had first married one Henry Daye, who obtained a decree of absolute divorce from her in the Supreme Court of the District of Columbia, December 12, 1924, on the ground of adultery, which said court found that she had committed with Daniel Loughran, Jr., who some years later became her husband while she was domiciled in the State of Florida. Based upon this *que* statement of fact respondents contended in the Supreme Court of the District of Columbia that because of the commission of adultery by petitioner herein prior to December 12, 1924, and notwithstanding her subsequent acquisition of a new domicile in Florida, where she became the wife of Daniel Loughran, Jr., in good faith, and notwithstanding the fact that she and her husband later were domiciled, in good faith, in the

State of Virginia, where she obtained a final decree of divorce *a mensa et thoro* against her husband because of his wrongful conduct, and notwithstanding that said divorce vindicated her said marriage and adjudicated permanent benefits in her favor thereunder, as the wife of said Daniel Loughran, Jr., nevertheless *she was not entitled to any rights or interests or distributive share in the corpus of her husband's estate or in the profits, rents or income of any properties* of her deceased husband Daniel Loughran, Jr., *because of her having committed adultery in the District of Columbia prior to December* 12, 1924, *seven years before her husband's death, September* 6, 1931, as determined in the suit wherein her first husband, one Henry Daye, was complainant.

Hearing upon the Complaint and Answer thereto was duly had before Mr. Justice Bailey of the Supreme Court of the District of Columbia, and said Justice passed an Order finding the petitioner was entitled to a widow's share from her husband's interest in the rents and profits from the real estate of his deceased father, Daniel Loughran, Sr., and passed a decree awarding same to petitioner, said Order, providing as follows:

> "This cause coming on to be heard upon the Amended Bill of Complaint, Rule to Show Cause issued herein, the Answer to the Rule to Show Cause, and the Answer to said Amended Bill of Complaint, and the same being considered, and counsel being heard, and it appearing to the satisfaction of the Court that the complainant *herein is the widow of Daniel Loughran, Jr., deceased*, and that said Daniel Loughran, Jr., deceased, *at the time of his death was seized* and possessed of

a one-tenth (1/10) undivided interest in the real estate belinging to Daniel Loughran, Sr., deceased, his father, and that there has accrued to the estate of said Daniel Loughran, Jr., deceased, and to this widow, the complainant herein, *the sum of Three Thousand Eight Hundred, Fourteen and 67/100 dollars,* ($3,814.67), *from the net rents, issues and profits* of and from said real estate and interest in the same, and that the complainant herein, under the laws of the District of Columbia, is entitled to a *'One-third part of the net rents and profits' so accrued and due,* and said complainant in open court, by her attorney of record, appearing and electing to take and receive, in lieu of other provisions for the allotment and setting apart to her of her dower interest in the real estate of her said deceased husband, Daniel Loughran, Jr., said third of said net rents and profits, so accrued, it is now, by the Court, this 17th day of September, 1932,

Ordered, adjudged and decreed that the defendants herein pay to the complainant the sum of One Thousand two hundred seventy-one and 55/100 dollars, ($1,271.55), as accrued rents, issues and profits due her as the widow of said Daniel Loughran, Jr., deceased, as her share of the net rents, issues and profits of and from the one-tenth (1/10) interest of said Daniel Loughran, Jr., in the real estate and the rents and profits thereof belonging to him, and of which he was seized and possessed at the time of his death, same being a one-tenth (1/10) undivided interest in the real estate holdings of his deceased father, Daniel Loughran, Sr., deceased, as set out in the Amended Bill of Complaint and admitted in the answer, said sum being the accrued rentals admitted by the defendants herein to be due said complainant up to September 1, 1932; and it is further

Ordered, adjudged, and decreed that from and after September 1, 1932, said defendants are di-

rected to pay monthly to said complainant, or her attorney of record, on or before the tenth day of each month a full one-third (1/3) of the net rents, issues and profits collected by them from the real estate interests belonging to the estate of Daniel Loughran, Jr., deceased, of which he was seized and possessed at the time of his death, as set out in said Amended Bill of Complaint." (Italics ours.)

Upon the foregoing decree being entered by Mr. Justice Bailey, an appeal by defendants was prayed to the Court of Appeals of the District of Columbia, where the cause was briefed and argued, and in which cause a decision of the Court of Appeals was rendered on June 26, 1933 (Rehearing denied August 8, 1933), which decision your petitioner says is *so gravely wrong and erroneous in principle, so contrary to the holdings of said court and of this Court and of the highest courts of the various States of the United States*, and so contrary to the settled and prevailing principles of equity and justice, as recognized by the Courts of this country, and so repugnant to the rules of comity between the States, and so contrary to the statutes of the District of Columbia and to the principles governing in Conflict of Laws, and so violative of the provisions of the Constitution of the United States as to imperatively require a review by this Court.

PART II

Grounds for Review by Certiorari

The Court of Appeals' decision found on Record pages 32, 33, 34 and 35 contains nine distinct errors of

law for which petitioner seeks a reversal by this Court on certiorari:

1. While recognizing the marriage of petitioner in Florida and the decree of divorce *a mensa et thoro* granted to her by the Corporation Court of the City of Alexandria, Virginia, the Court of Appeals denied to petitioner any right to share in her husband's estate, and placed a prohibitive ban upon her right to claim such interest, and puts her "without the pale of the law."

2. The Court erred in holding that it was unnecessary to deal with and interpret the legal effect of petitioner's marriage to her deceased husband, celebrated in the State of Florida, and her subsequent domicile and judicial recognition of said domicile and marriage by the Courts of Virginia.

3. The Court of Appeals further erred in holding that it was unnecessary in passing upon the merits of plaintiff's claim to consider the fact that she was a bona fide resident of the State of Florida, and legally domiciled therein at the time of the marriage and that it was unnecessary to decide the bona fides of the petitioner in securing such domicile and marriage, and the subsequent domicile in the State of Virginia.

4. The Court of Appeals further erred in holding that the case of *Olverson* v. *Olverson*, 54 Appeals D. C. 48, was decisive of the issues involved in petitioner's claim.

5. Said Court of Appeals further erred in its decision in respect to the property rights of petitioner in that its said decision has the legal effect of declaring void Title 14, Section 28 Chapter 2 of the Code of

Laws of the District of Columbia, and Title 29, Section 284 of said Code.

6. The decision of the Court of Appeals was further erroneous in that it declares void, in so far as equity is concerned, the marriage of petitioner to her deceased husband in the State of Florida, and its subsequent adjudication in the State of Virginia.

7. The Court of Appeals further erred in its holding that had the marriage been celebrated in the District of Columbia it would have been absolutely void.

8. The Court of Appeals further erred in its decision and judgment in that the legal effect of its decision is to bar plaintiff of her right of dower and to a distributive share in the personal property situated in the District of Columbia, said decision depriving plaintiff of rights guaranteed to her under Article IV of the Constitution of the United States requiring full faith and credit be given to the public acts and records of sister states, and said decision further deprived her of her property without due process of law, protected by Amendment V of the Constitution.

9. The Court of Appeals further committed error in its decision in holding that Section 966 of the District of Columbia Code has extraterritorial effect and that said section establishes a public policy, the effect of which is to bar the statutory dower of petitioner.

We now ask the Court's further consideration of the reasons upon which we ask for *certiorari*.

PART III

Brief in Support of Petition

1. *The decision of the Court of Appeals was erroneous in that it disregarded the marital status of appellant, as established in Florida and Virginia, and closed the equity Courts of the District of Columbia, to her, in contravention of her rights as her husband's widow and distributee*—and wrongfully bans her assertion of her legal and equitable rights and puts her, "*without the pale of the law.*"

No citizen of this Republic is "without the pale of the law," nor can any citizen be denied access to the courts to assert and claim his or her property rights unless such citizen comes into such court with "unclean hands," or has committed some act which works an estoppel. In this case the record and the Court's decision affirmatively show that the plaintiff came into Court with "clean hands." No facts justifying an estoppel are pleaded.

As to the "clean hands" doctrine—the Court of Appeals' decision (Record pages 34 and 35) says it is "unnecessary to waste time in considering the doctrine of 'clean hands', yet to counsel for petitioner there is *no foundation* at all for the decision of the Court of Appeals unless it is based either upon a finding of "unclean hands" against Petitioner, or that she is *estopped* to set up in 1931 and 1933 her rights as her husband's widow because of the finding of a branch of our District of Columbia Supreme Court in 1924, in a pending divorce suit against her, that she had been guilty of adultery. Of course, there is nothing in the record to show that the plaintiff came into

the equity court with "unclean hands," and the only thing in the record which could, by any stretch of judicial sanction, work an estoppel against her was, as just stated, that in another proceeding between herself and her first husband in 1924, and while she was domiciled in the District of Columbia, she was sued for a divorce, and a divorce decree was obtained against her upon a finding that she had been guilty of adultery.

Assuming that the Court of Appeals' decision, closing the doors of an equity court to petitioner, was based upon the theory that she was estopped to come into such court because of her having been found guilty of adultery during her first marriage in 1924, we bring to the Court's attention that such assumption by the Court of Appeals is utterly unwarranted in principle or by authority and we state to the Court with deep conviction and absolute confidence that there exists no weight of authority, or even respectable authority for such conclusion by the Court of Appeals.

The "unclean hands" doctrine, which might close the doors of an equity court to a complainant, *must exist as to the* case before it and being then adjudicated, and this has been held not only by the Courts generally, but by the Court of Appeals of the District of Columbia in express terms in the case of *Roote* v. *Roote*, 33 App. D. C. 398, where the Court says:

> "The rule that when a litigant comes into a court of equity, he must come with clean hands, refers only to the matter to be litigated and no other."

Surely, in view of the above statement of principle

from this Court, which is supported by abundant authority, in reported cases and in textbooks, we need not further argue to your Honors that the complainant in this case is properly in Court and entitled to have her rights adjudicated. See also *Viertel* v. *Viertel*, 99 Mo. Apps. 710, 75 S. W. 187 referred to, with approval, in the above decision, also *Levy* v. *Levy*, 16 Ill. Apps. 358, likewise referred to with approval.

It will be found that this statement of principle is based upon almost universal authority and the three cases so decided are leading cases upon the points and are upon facts much more prejudicial to the complainants in those cases than were the facts against the complainant in the cause here, where she was adjudicated a guilty party in a divorce proceeding.

In the case of *Huntzicker* v. *Crocker*; Wisconsin, 1908-115 N. W. 340 another leading case on the subject, the Court said, speaking of "Clean Hands":

> "'It does not mean that misconduct not connected with the matter in litigation and in no way affecting the opposite party will deprive a suitor of relief. Equity does not demand that its suitor's shall have led blameless and pure lives. If it did the Chancellor's Court would be little frequented. The general principle simply is that he who has been guilty of substantial misconduct "in regard to, or at all events connected with, the subject in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties and arising out of the transaction," shall not be afforded relief when he comes into Court as an actor seeking to set the judicial machinery in motion. Dower is highly favored in the law," etc.

In *Harlow* v. *Carroll*, 6 App. Cas. D. C., 128, this Court said at page 133:

> "No person, even the most depraved of women, should be debarred of their just rights in courts of justice, for the reason that they are depraved, or because they have happened to commit crime. *There is no such thing as legal outlawry in our American jurisprudence.* Fallen women have, or should have, as many rights before the law as their seducers; and it is no more becoming of the legal profession to stone them in the courts of justice when they come into them, or are brought unto them, in the enforcement of their rights, than it was for the infuriated rabble to stone them in the ages of barbarism." * * * (Italics ours.)

It is true that the Court of Appeals in this case stated that it did not wish to "waste time" upon considering the question of whether or not the petitioner herein came into court for the rents and profits from her husband's estate with "clean hands," yet we have felt compelled to present that theory to this Court in order to show this Court the extreme length to which the Court of Appeals has gone in setting up new doctrines which we think so revolutionary in character as to the domestic status of the parties concerned with relation to the distribution of petitioner's husband's estate to his widow and heirs at law.

Nor is there in the record anything against complainant which could work an estoppel against her entry into the equity courts of the District of Columbia to assert her rights. The only thing suggested against complainant, and the only excuse for closing the doors of the equity courts to her given by the Court of Appeals and the only explanation for putting her "with-

out the pale of the law," in the language of the Court's decision, is based entirely upon her remarriage in Florida while domiciled there, in good faith, more than a year after her divorce in the District of Columbia, and at a time when the records of the District of Columbia showed that seven years before she asserted her rights as the widow of her husband in 1931, that she had been adjudicated the guilty party in a divorce proceeding, against her, by her first husband.

The record made in this case in the Supreme Court of the District of Columbia and the Court of Appeals admittedly showed that in 1924 while Petitioner was a resident thereof and while she was domiciled in the District of Columbia, her first husband sued her for a divorce alleging adultery, and that a finding that she was guilty of adultery was had in that case, and that her husband was divorced from her on that ground. The further facts are admittedly shown by the record to be that more than a year after she was charged with adultery in the District of Columbia she established a new domicile in Florida, and there married and lived with her second husband until they removed to Virginia, where they were domiciled together, and where she obtained a final decree of divorce against her husband on account of cruelty, with a permanent alimony allowance, which said decree was subsisting against her husband at the time of his death in September, 1931, seven years after her divorce from her first husband in the District of Columbia.

These facts are utterly without weight in the establishment of an estoppel against petitioner as the widow of her deceased husband in claiming her widow's right and her distributive share of his estate,

including rents and profits from his real estate, upon his death in 1931, when she was legally recognized as his wife by the laws of Florida and Virginia, since her marriage in Florida and her subsequent domicile in Virginia, where her marriage was judicially affirmed and established and must be recognized by the Courts of the District of Columbia, and both the marriage record and the final decree of divorce in Virginia given full faith and credit here. The Court of Appeals of the District of Columbia has utterly ignored the principles of comity and and the recognition of the verity and validity of her domicile and marriage in Florida or the domicile and final decree of divorce in Virginia by utterly repudiating the universally recognized principles that a marriage good where legally celebrated is good everywhere, and that the rights of a widow to a legal marriage in one jurisdiction must be recognized against his property in any other jurisdiction.

From the case of *Oscanyan* v. *W. R. Arms Co.*, 26 Law Ed., 546, 103 U. S. 277, opinion by Mr. Justice Field, we quote the following:

> "The general rule undoubtedly is that the validity of a contract is to be decided by the law of the place where it is made, unless it is to be performed in another country; but to this, as to all general rules, there are exceptions, and among these Story mentions contracts made in a foreign country to promote or reward the commission of crime, to corrupt or evade the due administration of justice, to cheat public agents or to affect the public rights, and other contracts which in their nature are founded in moral turpitude, and are inconsistent with the good order and solid interest of society. "All such contracts," he adds, "even

> although they might be held valid in a country where they are made, would be held void elsewhere, or at least ought to be, if the dictates of Christian morality or even of natural justice are allowed to have their due force and influence in the administration of international jurisprudence." Story, Confl. L., sec. 258."

The Court of Appeal's decision attempts to establish the principle that Section 966 of the Code of Laws of the District of Columbia declares a public policy which gives the courts of the District of Columbia the right to treat as invalid and void any marriage in violation of the terms of said Section, whether the same occurs while the parties are domiciled in another jurisdiction, whether the same is celebrated in good faith in consonance with all the applicable laws of such jurisdictions and/or whether or not the parties thereto are accepted as legally married by the jurisdiction of their new domicile and/or the jurisdiction of any other domicile to which they may subsequently remove. To support this contention, which counsel for petitioner thinks amazing, the Court of Appeals in this cause approves its own decision in the case of *Olverson* v. *Olverson*, 54 App. D. C. 48, and holds said decision to be decisive of this case, and to be so definitely decisive of this case as to close the doors of the equity courts of this jurisdiction to petitioner, to put her "without the pale of the law" and to bar her forever from asserting any rights in equity to her widow's interest in her husband's estate, or to any distributive share therein, although she lived with her deceased husband in Florida and Virginia, was recognized as his wife and was supported by him continuously for seven years before he died.

2. The Court of Appeals further committed grave error in its decision against petitioner in said cause when it held that it was unnecessary for that Court to deal with and interpret the legal effect of the petitioner's marriage to her deceased husband celebrated in the State of Florida and her subsequent domicile and the judicial recognition of her said domicile and marriage by the Courts of Virginia.

Under date of March 10, 1930, The American Law Institute issued its "Restatement of the Law of Conflict of Laws Proposed Final Draft No. 1" in which, under the title "Marriage," Topic A, Section 129, p. 170, the law governing the validity of marriage is declared. Counsel understands this Restatement to be the consensus of view of the great jurists engaged in the monumental work of giving to the judiciary and the legal profession a thoroughly studied and thought-out definition or accepted statement of what domestic and property rights are as settled by the great weight of authority in this country. Quoting from the above Restatement of the Law, Section 129, we find the following:

> "SECTION 129—Law Governing Validity of Marriage—EXCEPT AS STATED IN SECTION 140, A MARRIAGE IS VALID IF THE REQUIREMENTS OF THE MARRIAGE LAW OF THE STATE WHERE THE MARRIAGE TAKES PLACE ARE COMPLIED WITH.
>
> (a) Section 140 applies to polygamous, incestuous and abhorrent marriages.

Even before the above Restatement of the Law of Marriage, and its attendant privileges and rights, the Courts had, with practical unanimity, reached the

same conclusion as the distinguished lawyers who prepared the Restatement, and many of the authorities so declaring the law were briefed and cited to the Court of Appeals in this cause, but were apparently given inadequate consideration, or were deemed inapplicable in the District of Columbia, because of the decision by the Court of Appeals theretofore rendered in the case of *Olverson v. Olverson*, 54 App. D. C. 48, hereinafter referred to and distinguished.

In the American Law Institute Restatement of the Law as to marriage and divorce, we find further:

> "SECTION 137 p. 176. Evasion of Requirements of Domicil—
>
> IF THE REQUREMENTS OF THE LAW OF THE STATE OF CELEBRATION ARE COMPLIED WITH, THE MARRIAGE IS VALID, EXCEPT UNDER THE CIRCUMSTANCES STATED IN SECTION 140, (Polygamous, incestuous, and Abhorrent Marriages), ALTHOUGH THE PARTIES TO THE MARRIAGE WENT TO THAT STATE IN ORDER TO EVADE THE REQUIREMENTS OF THE LAW OF THEIR DOMICIL."

In Section 138 p. 177 of the Restatement of the Law of Conflict of Laws, we find the following:

> "Sec. 138. Marriage After Divorce—
> IF, BY A DECREE OF DIVORCE VALIDLY GRANTED IN ONE STATE, ONE PARTY IS FORBIDDEN FOR A CERTAIN TIME OR DURING HIS LIFE TO MARRY AGAIN, AND HE GOES INTO ANOTHER STATE AND MARRIES ACCORDING TO THE LAW OF THAT STATE, THE MARRIAGE IS VALID, AND WILL BE SO RECOGNIZED EVEN IN

THE STATE IN WHICH THE DIVORCE WAS GRANTED, EXCEPT AS STATED IN SECTION 140." (Polygamous, incestuous and abhorrent marriages.)

The above sections merely state the dominant weight of authority which was so widely recognized in our various jurisdictions as to constitute a body of law readily presented in one paragraph and it is confidently stated here that there is no respectable weight of authority to the contrary in the jurisdictions of this Country. We bring to the Court's attention further, Section 139 of the Restatement, p. 177, as follows:

"Section 139. Marriage After Parties to Divorce Both Forbidden to Remarry—

IF, BY A DECREE OF DIVORCE VALIDLY GRANTED IN ONE STATE, EACH PARTY IS FORBIDDEN FOR A CERTAIN TIME OR DURING THE LIFE OF THE OTHER PARTY TO MARRY AGAIN, AND ONE PARTY GOES INTO ANOTHER STATE AND MARRIES, BEING PERMITTED TO DO SO BY THE LAW OF THAT STATE, THE MARRIAGE IS VALID, AND WILL BE SO RECOGNIZED EVEN IN THE STATE WHERE THE DIVORCE WAS GRANTED, UNLESS

(1) The time named is a time within which an appeal to a higher court may be taken; or
(2) The statute which forbids the parties to marry is expressly made applicable to the marriage of domiciliaries in another state; or
(3) The marriage is invalid under the provisions of Section 140." (Polygamous, Incestuous and Abhorrent Marriages.)

We are not bringing forward applicable authorities

under each statement of the laws' Restatement above quoted from because many such authorities have already been cited herein under another heading, and further because the principles are so uniformly recognized that it seems an act of supererogation to further urge their consideration upon this Court.

3. *That the Court of Appeals further committed grave error in holding that it was unnecessary, in passing upon the merits of plaintiff's claim to a share of the rents and profits of her husband's real estate to consider the fact that when she was married to her deceased husband she was a bona fide resident of the State of Florida, and legally domiciled therein; and further committed error in holding that it was immaterial and irrelevant to her right to share in her husband's estate in the District of Columbia that she, following her marriage in Florida, acquired a new domicile with her husband, in good faith, in the State of Virginia, maintained same to the date of her husband's death, and subsequently thereto; and that while so domiciled in Virginia, she secured a final decree by a competent court of said State, holding that she was the duly wedded wife of said decedent, entitled to permanent benefits under a decree of divorce a mensa et thoro because of his misconduct, and therefore entitled to her legal rights as his widow and a distributee of his estate upon his death.*

The Court of Appeals in its decision and judgment said, among other things.

> "It is unnecessary for us to concern ourselves with the legality of the Florida marriage in that State, or with the subsequent divorce proceedings in the State of Virginia, since the disposition of

> the case is dependent entirely upon the law of the District of Columbia. Insofar as the law of the District is concerned, the marriage between plaintiff and Daniel Loughran, Jr., in Florida, if performed in the District of Columbia, would be absolutely void, and the plaintiff being the offending party against the law of the District, is in no position to enforce any claim against the estate of Daniel Loughran, Jr., growing out of the marriage in Florida.
>
> * * * It is unnecessary to waste time in considering the doctrine of 'clean hands' as applicable to this case. Plaintiff, by her own unlawful conduct has placed herself without the pale of the law, and annot be heard in a court of equity to take advantage of her own wrong."

The above statement contains errors of law as follows:

(a) The Court of Appeals should have concerned itself with the legality of the Florida marriage in that State.

(b) The Court of Appeals should have considered and given great weight to the subsequent final decree of divorce in the State of Virginia.

(c) The entire disposition of this case is not dependent upon the laws of the District of Columbia, but

(d) The marriage here in question would not have been absolutely void if it had occurred in the District of Columbia, (though we deem this immaterial to a decision of this case) such marriage would only have been voidable, and

(e) Plaintiff is in a position to enforce her claims

against the estate of her deceased husband, "growing out of the marriage in Florida."

Upon what theory may it be said that a marriage of two people domiciled in the State of Florida, who established their domicile there in good faith and there resided for about three years, and thereafter removed to the State of Virginia, and acquired a new domicile where they resided as husband and wife for a long period of time, and where they were finally divorced in a suit for divorce by the deceased husband against petitioner, to which petitioner filed a cross-bill, and in which suit his bill was dismissed and her cross-bill was maintained, are of no concern to the Courts of the District of Columbia?

Assuming again that the Court of Appeals correctly stated the principles of law governing domestic relations in the District of Columbia in the Olverson case (which we earnestly say it did not), that case, in no sense, should rule this case, since, as hereinbefore stated, there is no similarity of facts and no analogy in principle, and no parallel in the violation of the duties of litigants done within this District upon which the Olverson decision was based, the petitioner in this case having married in Florida, while domiciled therein, and having left the District of Columbia, in good faith, and not for the purpose of evading its laws, as were the facts in the Olverson case.

It was the duty of the Court of Appeals to follow the Supreme Court of the District of Columbia, and recognize the Florida marriage as it was without any legal infirmity. Likewise, it was that Court's duty to recognize the divorce proceedings in Virginia for the same reasons. Since the laws of the District of Columbia have not declared a public policy contrary

either to the domicile and marriage in Florida, and to the subsequent domicile and divorce in Virginia, only the declaration of a public policy condemnatory of marriages such as that celebrated in Florida and adjudicated in Virginia could give authority to the Court of Appeals to put a bann upon petitioner's marriage and her rights as the widow of her husband, and to put her beyond the pale of the law, as, by its decision, it has undertaken to do.

To render void or legally invalid petitioner's marriage in Florida, and her subsequent decree of divorce in Virginia, it would be necessary for Congress to declare that a marriage under the conditions set out in this record was offensive to the policy of Congress, the law making body of the District of Columbia, and the legislature would further have to state that any marriage so celebrated would be legally void or invalid in the District of Columbia.

Again referring to the Restatement of the Law by the American Law Institute we find (Section 142, p. 181):

> "Section 142. Marriage Contrary to Public Policy—
>
> IF ANY EFFECT OF A MARRIAGE VALIDLY CREATED BY THE LAW OF ONE STATE IS DEEMED BY THE COURTS OF ANOTHER STATE SUFFICIENTLY OFFENSIVE TO THE POLICY OF THE LATTER STATE, THE LATTER STATE WILL REFUSE TO GIVE THAT EFFECT TO THE MARRIAGE.
>
> Comments:
>
> (a) The action of the state in refusing to give

effect to a marriage on the ground stated in this Section does not deny the validity of the marriage, but precludes the enjoyment within the state of some particular right incident to the marriage.

(b) The mere fact that the marriage is contrary to the statute of the forum does not make it so offensive to policy as to be refused enforcement.

(c) It is ordinarily offensive to the law of a common-law state to allow cohabitation, incestuous by its laws, though the parties were validly married in a state which permitted the marriage."

Section 966 of the Code of the District of Columbia, hereinafter quoted, establishes no public policy against a remarriage of a guilty party to a divorce proceeding, said Section merely *prohibits* such remarriage. The prohibition contains no penalty, and declares no policy, and the Court of Appeals is without authority to create by judicial fiat a public policy not established by Congress. It is the legistative authority only that can establish such public policy, and it has not done so, and the Courts may not do so without legislative authority.

It is only fair to the Court of Appeals and to this Court to say that there is a line of authorities which holds that if and when a person domiciled in one State removes to another for the purpose of marrying "with no intention of changing their citizenship or residences," and are married, and return to the original domicile that such marriage will not be recognized if it would have been refused recognition in the place of domicile. Such is the holding in the case of *Hef-*

linger v. *Heflinger,* 136 Va. 289, but that decision is based upon Sections 5113 and 5089 of the Virginia Code, which positively declares that marriages so circumstanced should be null and void, and that marriages of parties evading the restrictions of Virginia law, while domiciled in Virginia, should be governed by the laws of Virginia. In Virginia there was a legislative policy declared and the Court of Appeals merely declared that policy in the case quoted from. The same general statement of principle upon facts and conditions somewhat similar have been stated by the Courts of other jurisdictions as follows:

Stull's Estate, 183 Pa. 625—39 L. R. A. 359.
Pennegar v. State of Tenn. 87 Tenn. 244; 2 L. R. A. 203.
Williams v. Oates, Admn. 27 N. C. 535.
Hall v. Baylous, 153 S. C. 292; 69 A. L. R. 527.
Catherine Gabiesco, 119 La. 44 So. 438, 11 L. R. A. (N.S.) 1082.
Lanham v. Lanham, 117 N. W. 787—17 L. R. A. (N.S.) 804.
Estate of Frank E. Smith—17 L. R. A. 573.
Eaton v. Eaton, 60 L. R. A. 605.
Crawford v. State of Mississippi, 35 L. R. A. 224.
Peerless Pacific Co. v. Burchard, 1917 (C)-L. R. A. 353.
Sammons v. Sammons, 46 A. L. R. 39 (1918).

However all of these cases show that the party charged with infidelity in various jurisdictions wilfully abandoned that jurisdiction in order to marry elsewhere, *in defiance of its laws,* and returned to the domicile in the same attitude. Nor do any of the jurisdictions have a statute such as that in the District

of Columbia. They are far more rigid, and express definite policies of the State and prohibit remarriage of a person found guilty of adultery, *as a policy of public morals in support of the good order of society.* No such policy is declared by the District statute.

In each case above cited, according to our analysis, the decision is distinguishable from the case at bar not only upon the grounds above stated, but because of differing facts and legal rights. In none of them was it attempted to deprive the widow of a deceased person, to whom the offending party in a divorce proceeding had remarried in another jurisdiction and subsequently become domiciled in a third jurisdiction of her rights as widow and/or next of kin: In none of the cases did the Court hold that remarriage outside of the jurisdiction where the divorce was obtained would effect the descent or distribution of property under the statutes of distribution, or of descent. Even if they had, such holding would have contravened the constitutional safeguards of guaranteeing to citizens of one State all rights, privileges, and immunities given to citizens of other States.

It appearing from the record in this case, therefore, that Congress has declared no public policy condemnatory of marriages such as that of petitioner, and has merely passed a provision prohibiting the same without penalty, the marriage of petitioner occurring in good faith in Florida while she was domiciled there must be recognized as valid here, and likewise the domicile of the petitioner in Virginia, and the divorce from her deceased husband there must be held to be a subsisting adjudication of said marriage, and be recognized here and given full faith and credit

in the disposition of the property of decedent's husband fully recognizing her right as his widow thereto and therein.

We want to state here, with all possible emphasis, that this record does not warrant the decision of the Court of Appeals herein rendered since said decision invalidates the laws of the District of Columbia, as to the rights of a widow, whose legal marriage, in good faith, in the State of Florida, is conclusively established and legally admitted by the pleadings, and whose legal status, according to the pleadings, was subsequently judicially established by the Courts of the Commonwealth of Virginia.

We are quoting hereinafter sections of the District of Columbia Code governing the rights of petitioner as the widow of her deceased husband to a share and distributive interest in his estate. Title 14, Section 28, Chapter 2, subject "Property Rights," Code of Laws of the District of Columbia defines dower in the District of Columbia, said section declaring:

> "*A widow*, after the death of her husband, * * * for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the church door."

From Title 29, Section 284, Code of Laws of the District of Columbia, we take the following:

> "Title 29—Section 284—
>
> Same; when spouse entitled to one-half—*If there be a widow* or surviving husband and no child or descendants of the intestate, but the said intestate shall leave a father or mother, or broth-

er or sister, or child of a brother or sister, the widow or surviving husband shall have one-half." (Italics ours.)

Notwithstanding the above sections of the Code of Laws of the District of Columbia, the decision of the Court of Appeals herein, in legal effect, has absolutely deprived petitioner of any right (a) to enter the equity courts of this District to claim her dower as the widow of her husband; (b) to demand an accounting of appellants who have collected the rents from her husband's real estate, (c) and/or to obtain any benefits whatever from her husband's estate. By said decision of the Court of Appeals also petitioner has been, in legal effect, barred from claiming from the estate of her deceased husband any interest in the properties left by him in the District of Columbia.

It is unnecessary to cite authorities to this Court that it is beyond the power of the court to legislate; that it may not repeal legislation, and that its right to interpret is based upon reasonable deductions and analysis. We submit, however, that in this case, its decision has been effective to destroy utterly the dower and distributive rights of petitioner as the widow of her husband, by destroying all remedy guaranteed to her by law to seek and possess the same. Surely this cannot be done, and surely this Court will recognize the gravity of such action, and certify the record in order that the principles so universally applicable to the property rights of husband and wife may be applied in this jurisdiction, as prayed for by petitioner.

The holding of the Court of Appeals in the instant case is contrary to its own holdings on the same

subject.

In *Tyler* v. *Andrews*, 40 App. Cas. D. C., 100, there was a contest between two women, each claiming to be the widow of Benjamin Andrews, testator, leaving personalty which was located in this District. Laura Tyler, the appellant, was the step-daughter of the decedent. The latter, after a marriage with her mother, resided with his wife in Maryland. After the mother's death, the decedent, surviving husband, who was prohibited under a Statute of Maryland (Act 1777, Ch. 12, Sec. 1) from marrying his step-daughter in Maryland, nevertheless married her in Ohio, and thereafter they returned to and resided in Maryland, as husband and wife. Section 1283 of Code, D. C. (same as Md., Act 1777, Ch. 12, Sec. 1) provided that the marriage of a man with his widow's daughter is prohibited in the District of Columbia, and is absolutely void *ab initio* without being so decreed, and its nullity may be shown in any collateral proceedings. Section 1284 Code, D. C., provided that any marriage (including marriage between a man and his step-daughter) set forth in Section 1283 Code D. C. may also be declared to be null and void by judicial decree.

After the decedent married appellant Laura Tyler, he later married the appellee, no divorce having ever been obtained from Laura Tyler. The man died leaving personal property in this District, and each woman claimed to be his widow. This court, on the authority of the Maryland decisions, notwithstanding the fact that if the marriage of the testator with his step-daughter had occurred in the District of Columbia (which would have been in violation of section 1283 Code, D. C., *supra*), and that notwithstanding the fact that the marriage of the parties, if it had occurred in

Maryland (which would have been in violation of the Maryland statute) (Act. 1777, Ch. 12, Sec. 1., *supra*) recognized the validity of the marriage that had occurred between the testator and his step-daughter in Ohio, and reversed the lower court, and held that Laura Tyler, as widow, was entitled to her statutory share in her husband's estate, located in this District.

We submit that the Tyler-Andrews case is decisive of the case at bar.

See to same effect, *Stevenson* v. *Gray*, 17 B. Monroe, (Ky.) 193.

In *Abramson* v. *Abramson*, 60 App. Cas. D. C. 119, the Court held that a woman's remarriage in violation of an Illinois statute, within three months after obtaining divorce, not having been attacked before the enactment of a repealing and curative act, was valid in this District, reaffirming the Maryland cases upon the subject, and also *Tyler v. Andrews*, 40 Apps. D. C. 100.

We submit that the appellee did not offend against the law of the District because she did not remarry in the District of Columbia, and because she did not go out of the District and remarry to evade the law of this District, whilst having and retaining her domicile in the District of Columbia (Sec. 1287 Code D. C.); and also because the law of this District (Sec. 966 Code D. C.) has no extra-territorial effect, and, further, because Section 966 does not deny dower to a widow, if, whilst *bona fide* domiciled in another jurisdiction she remarries after a decree against her in a divorce suit.

No right guaranteed by law is more zealously or jealously guarded than the rights of a widow, and it

is beyond the power of any court to so interpret the law as to deprive a widow of her right in her husband's estate after she has legally married him, unless her marriage violates some high moral concept of the people, or is a grave breach of the moral senses of a Christian country as to be revolting to its citizens. These rights have been recognized by our highest courts, including the Supreme Court of the United States, during the entire history of our country. In our reading of the authorities of many States, and particularly in our examination of Federal authorities we have found cited repeatedly throughout the country the case of Ponsford v. Johnson, 2 Blatchford, Southern District N. Y. 1847. This has been a leading case on the subject of the rights of a widow where there has been a marriage involving a party found guilty of adultery in a State and the reasoning and the ethics of the decision have been followed with great unanimity by the Courts. In this case the plaintiff Ponsford claimed a distributive share of personal property left by her husband, claiming as his widow. Ponsford had previously been absolutely divorced in New York from his first wife on the ground of his adultery. By statute in New York it was unlawful for the defendant so convicted of adultery to marry again during the lifetime of the complainant. While plaintiff and Ponsford were residing in New York, they went over into New Jersey and were there married. Plaintiff claimed under the New York Statutes. Her claim was refused her on the ground she was not the widow of Ponsford. Held: She was entitled to share in his estate.

In the instant case the widow is denied the right to

enter the equity courts to assert her right to a widow's distributive share of her personal estate.

In deciding the Ponsford case the Court said:

> "1. We consider that, as a general principle, the capacity or incapacity to marry depends on the law of the place where the marriage is contracted, and not on that of the domicile of the parties. This principle need not be asserted as absolute in all cases. Incest, polygamy, and practices outraging the moral sense and usages of civilized nations, may be excepted from the rule, without impairing its justness and efficacy."
>
> "2. We regard the decree of divorce pronounced by the Court of Chancery of the State of New York to be, in its purport and by force of the statute of the state, an absolute dissolution of the marriage contract as to both parties, and that the disqualification or disability to marry declared by the statute, attached to Ponsford, by way of penalty, only within the State of New York, and did not incapacitate him from contracting a sound and valid marriage in the State of New Jersey, where the same disability did not exist."
>
> "3. We think that the validity of the marriage in New Jersey would not have been affected if both parties had resorted there to evade the prohibitory law of New York. And, clearly, where one party was innocent and ignorant of such purpose, the mala fides of the other could not impeach the marriage, if it was lawful in all other respects."

Surely, in view of the above statement of principle, which has been so often approved, confirmed and ratified by the Courts of the Nation, as has been hereinbefore and will be hereinafter more fully set out, it is strange, almost incredible, how the Court of Appeals

could have reached the decision it did in this case, to close the doors of the equity courts against the plaintiff.

4. *That the Court of Appeals further erred in holding that the case of Olverson v. Olverson,* 54 App. D. C. 48 *was and is decisive of the issues involved in petitioner's claim to a right in her husband's estate, her rights being distinguishable from those of the plaintiff, in the Olverson case upon every material point at issue in that case, both in law and fact.*

Every principle which justified the Olverson case is absent in the present case.

The party seeking relief in the Olverson case was found by the court to have *deliberately left* the District of Columbia for the purpose of marrying *while she was legally domiciled in the District of Columbia*, and further found that she thereupon returned to the District with the defendant Olverson. This brings the case into one of the exceptions of the general rule that if there is a deliberate evasion of the laws of the District *by a resident thereof*, and if a fraud is practiced on the court in that very matter, that in such case, the court may deny that party a divorce. This is based upon, not only the ground of fraud upon the court and evasion of local laws, but also because the suing for a divorce from the marriage involves *the very matter in controversy*,—the marriage contract. No such issues are involved here.

On the other hand, the decision in the case of Olverson v. Olverson, instead of holding the Maryland marriage void, relieving the parties from the bonds of matrimony by reason of Section 966 of the Code, held that they could *not be so relieved* and denied the plaintiff a divorce from the defendant. In other words, hav-

ing assumed the legal contract with the defendant, the court held that she was bound by it, notwithstanding the cruelty and non-support of the defendant.

This court will note that in its consideration of the Olverson case it found that the appellant in that case *deliberately* set at naught the District statute and then asked the Court to *relieve* her of the obligations of her marriage, *which she had wilfully* and *wrongfully assumed*. It was because of the wilful acts of appellant, which do not and are not claimed to exist here, that the Court found against appellant in the Olverson case, and such finding was also based upon the effort of appellant in that case to secure a release from the obligations of her marriage vows within the District of Columbia, where she resided, which obligations she had wilfully and wrongfully assumed by deliberately flaunting her remarriage in Maryland while she was domiciled here, in the face of our Courts in violation of its decree. This *flaunting* or violation of the decree of this Court was a wilful crossing the District line for the purpose of remarriage in order to avoid the terms and conditions of the local law. No such fact exists in the present case, nor is such fact even contended for by appellees. The *good faith* of the removal of petitioner to another jurisdiction, her subsequent marriage *in good faith*, and her subsequent residence in Virginia, *in good faith*, are not questioned by the record.

Treating the Olverson case as the governing authority for the decision herein by the Court of Appeals of the District of Columbia, it should be stated that that case holds, in legal effect, that two people while domiciled in the District of Columbia, one of whom has been found guilty of adultery in a previous case in the Dis-

trict of Columbia, may not deliberately flaunt the laws of the District of Columbia, *while so domiciled* therein, by going to another jurisdiction for the purpose of evading said laws, and there marrying and then immediately returning to take up their domicile in this District in defiance of the local law. If *this* case had any of the vices of the Olverson case it might be argued that a policy should be declared by our Courts against such marriages. However, the settled opinions of the Courts warrant even marriages of this character, and recognize them as valid in the distribution of property in the jurisdictions affected, and there is no declaration of public policy by the Congress of the United States against the recognition of such marriages here. The only legislative declaration of policy affecting marriages of divorced persons, one of whom has been found guilty of adultery is Section 966 of the Code of Laws of the District of Columbia, reading as follows:

> "Sec. 966. CAUSES FOR A DIVORCE A VINCULO AND FOR DIVORCE A MENSA ET THORO.—A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: *PROVIDED, That in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of divorced parties to each other.* * * *". (Italics ours).

In the Olverson case the Court of Appeals held that a person guilty of adultery, that is, the person other than the innocent party to a divorce proceeding, could not go into Maryland, deliberately endeavoring to evade and avoid the application of the District laws to his marriage contract, and while in Maryland tempo-

rarily and not domiciled there, be married there, and then immediately return to the District of Columbia, his domicile, and then have his Maryland marriage recognized.

The only warrant for the Court's decision in the Olverson case was based upon the theory of the court that by enactment of Section 966 of the Code, there was brought into existence a public policy, a declaration of public morality, which put a ban upon the marriage anywhere, under any conditions, of a person guilty of adultery in a divorce proceeding of a person domiciled in the District of Columbia at the time of the marriage, but who evaded the application of the District laws by deliberately going beyond the confines of the District and marrying elsewhere, and then returning and taking up a continuing domicile within the District.

Even if the facts in this case had been at all analogous to the facts in the Olverson case, it is earnestly submitted that even then the marriage would have been valid in the District of Columbia, and that the Courts of the District of Columbia were under a duty to recognize it in the distribution of the property of petitioner's husband in this jurisdiction. This is true because nothing can establish a public policy against the validity of a marriage beyond the jurisdiction of the District of Columbia of a guilty party to a divorce proceeding, except the Congress of the United States by due legislative enactment, and it cannot do so unless by express terms declaring such remarriage a positive violation of public morality and against public decency.

Section 966 of the Code of laws of the District of Columbia above quoted provides that the innocent

party only may remarry, but carries no penalty and makes no declaration that any subsequent remarriage by the guilty party shall be void, and makes no declaration of public policy, to wit: that the marriage, if celebrated outside the jurisdiction, will not be recognized subsequently within the jurisdiction. Without such declarations in our statutes, declaring a fixed public policy and a statutory requirement of non-recognition, then all of the authorities require recognition, and the question of such recognition has been so well settled as to be beyond serious debate.

Quoting from 5 Ruling Case Law, Section 84, Title, "Conflict of Laws," we find the following:

"84. Statutes Prohibiting Remarriage after Divorce.—It is almost *universally conceded that statutes prohibiting the guilty party to a judgment of divorce from marrying again, either for a certain period*, or while the other party to the former marriage lives, *are without effect outside of the territorial limits of the prohibiting state*. Since such a *prohibition* is in the nature of a penalty it does not apply to divorces granted *outside of the state*, nor does it carry any *disability* beyond the borders of the state where in force. Consequently where the parties to the subsequent marriage are not at the time thereof *domiciled* in the state where the divorce was rendered, the statutory prohibition *against remarriage does not apply if*, notwithstanding such *prohibition*, the first marriage may be regarded as actually ended and the *remarriage is celebrated in another state*. There is a decided conflict of authority, however, upon the question whether the courts of the state which has enacted such a statute merely in general terms prohibiting such remarriage, will *recognize as valid* the remarriage of such a person

> occurring out of the state *while he was still domiciled within the state*. The weight of authority is that if the marriage *is valid according to the lex loci*, it will be upheld even by the courts of the state *which enacted the statute, and in which the parties to the remarriage are domiciled*, and even though the parties went out of the state to solemnize the second marriage, for the express purpose of evading the *law of the domicil and of the forum*." (Italics ours).

We deem it settled beyond serious discussion that whatever may have been the cause for a divorce of a citizen of one jurisdiction, if that citizen removes, in good faith, to another sovereignty, and acquires a new residence, *in good faith*, and then subsequently marries in that jurisdiction *in good faith*, and removes to another sovereignty, where she obtains a final decree of divorce, *in good faith*, that in such cases her marriage and divorce must be recognized not only in every other State or jurisdiction, but also in the one in which she was originally divorced. Such is the settled doctrine by the decisions in England and in practically all of the States of the Union. Quoting from 19 *Corpus Juris, Section* 21, *Page* 463, we find the following:

> "Section 21. *What Law Governs.* If a marriage was valid in the state in which it was contracted, its validity will be recognized in another state so as to entitle the woman to dower in lands in the latter state, although the marriage would not have been valid if contracted in such state."

Supporting the above quotation from Corpus Juris are the following citations of authorities, all of which are well considered, thoroughly seasoned in their

reasoning, and we think conclusive upon the propositions:

Putnam v. Putnam, 8 Pick. (Mass.) 433; Dickson v. Dickson, 1 Yerg. (Tenn.) 110, 24 AmD 444.

Ky.—McIlvain v. Scheibley, 109 Ky. 455, 59 SW 498, 22 KyL 942; Stevenson v. Gray, 17 B. Mon. 193.

Md.—Fornshill v. Murray, 1 Bland 479, 18 AmD 344.

Mass.—Medway v. Needham, 16 Mass. 157, 8 AmD 131.

N. J.—Smith v. Smith, 52 N. J. L. 207, 19 A 255.

N. Y.—Van Voorhis v. Brintnall, 86 N. Y. 18, 40 AmR 505; Smith v. Woodworth, 44 Barb. 198; Fenton v. Reed, 4 Johns 52, 4 AmD 244.

N. C.—State v. Ross, 76 N. C. 242, 22 AmR 678.

Eng.—Warrender v. Warrender, 2 Cl. & F. 488, 6 Reprint 1239; Lacom v. Higgins, D. & R. 38, 16 ECL 425; Potter v. Brown, 5 East 124, 102 Reprint 1016; Scrimshire v. Scrimshire, 2 Hagg. Cons. 395; Dalrymple v. Dalrymple, 2 Hagg. Cons. 54, 17 ERC 11; Connelly v. Connelly, 14 Jur. 437, 2 EngL&Eq 570; Hunter v. Potts, 4 T. R. 182, 100 Reprint 962.

Each of the above authorities were set out in detail in our brief in the Court of Appeals of the District of Columbia, and no effort was made by counsel for the defendants in this cause in that Court to except to them or to cite contrary authorities.

5. *Said Court of Appeals further erred in its said decision with respect to the property rights of petitioner in that its said decision has the legal effect of unconstitutionally, inequitably and illegally declaring void, Title* 14, *Section* 28, *Chapter* 2 *of the Code of*

Laws of the District of Columbia, entitled "Property Rights," and also Title 29, Section 284 of said Code, which sections provide for distribution of the estate of a deceased husband to his heirs at law, including his widow.

The sections from the District of Columbia Code defining the rights of a widow are as follows:

Title 29, Chapter 12, Section 284 (The Code of D. C. 1929)—

"284. Same; when spouse entitled to one-half.—If there be a *widow* or surviving husband and no child or descendants of the intestate, but the said intestate shall leave a father or mother, or brother or sister, or child of a brother or sister, the *widow* or surviving husband shall have one-half. (Mar. 3, 1901, 31 Stat. 1249, c. 854, *sec* 376; Apr. 19, 1920, 41 Stat. 563, c. 153.)" (Italics ours.)

Sections 28, 29, Title 14, Chapter 2 (The Code of D. C. 1929)—

"28. Dower, right of quarantine; dower defined.—A *widow*, after the death of her husband, incontinent, and without any difficulty, shall have her marriage and her inheritance and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be assigned her (if it were not assigned her before) or that the house be a castle; and if she depart from her castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid; and she shall have in the meantime her reasonable estovers of

the common; and for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the church door. (9 Henry 3, c. 7, sec. 1, 1225; Kilty's Report, p. 205; Alex. Brit. Stat. 1; Comp. Stat. D. C. p. 36, sec. 164)." (Italics ours.)

"29. Same; equitable titles.—A *widow* shall be entitled to dower in lands held by equitable as well as legal title in the husband at any time during the coverture, whether held by him at the time of his death or not, but such right of dower shall not operate to the prejudice of any claim for the purchase money of such lands or other lien on the same. (Mar. 3, 1901, 31 Stat. 1375, c. 854, sec. 1158.)" (Italics ours.)

A very full discussion of the rights of a widow to dower and to a distributive interest in her deceased husband's estate has already been indulged under Point No. II of this brief, and reference to such discussion is hereby made, the same being found upon pages 18 through 20, inclusive.

6. *That the decision of the Court of Appeals was gravely erroneous further in that it declares void, in so far as equity is concerned, the marriage of petitioner and her deceased husband in the State of Florida and its subsequent adjudication in the State of Virginia. Said Court of Appeals, by its said decision, refused to recognize or chose to ignore the admittedly legal validity of plaintiff's marriage in said State of Florida, and her admittedly legal domicile therein at the time thereof and subsequently thereto, and likewise treated as immaterial the legal effect and validity of her subsequent domicile in the State of Virginia, as well as the final judgment of the Courts of said State.*

that she was legally married to her husband and entitled to the benefits, privileges and advantages of such marriage, (R. p. 13-14), *which said decree was subsisting and effective to the very date of the death of her deceased husband; that each and all of said holdings in the said decision of the said Court of Appeals were and are in direct violation of the universally recognized rule of comity between the States of the American Union and the universally accepted principle that the Courts of one jurisdiction shall give full faith and credit to the legal and valid acts and determinations of the competent courts and the public records of other jurisdictions.*

The authorities quoted throughout this brief support fully the above statement in Point No. 6, and it is believed that every principle declared therein has been the established law of the District of Columbia, as well as in the States generally until the utterance of the Court of Appeals in this cause, completely reversing said principles and stating a judicial position utterly out of harmony with its own previous decisions herein referred to and quoted from under Point No. 8, and the decided cases throughout the country.

7. The Court further committed error in its assumption that if the marriage had been contracted in the District of Columbia it would have been absolutely void.

For the benefit of the Court, Section 966 of the Code of Laws of the District of Columbia is again herewith set out:

"Sec. 966. CAUSES FOR DIVORCE A VINCULO AND FOR DIVORCE A MENSA ET THORO.—A divorce from the bond of marriage

may be granted only where one of the parties has committed adultery during the marriage: PROVIDED, That in such case *the innocent party only may remarry*, but nothing herein contained shall prevent the remarriage of divorced parties to each other. * * *" (Italics ours.)

Nowhere in the above quotation is there found any suggesting that a marriage contracted in violation of the above would be absolutely void, yet the Court of Appeals has read that provision into the statute. When read in connection with Section 1283, (Title 14, Sec. 1, Chap. D. C. Code, 1929) from which we quote as follows:

"Section 1, Title 14, Chapter 1 (The Code of D. C. 1929)—

"Section 1. Prohibitions.—The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First, The marriage of a man with his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

Second, The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's

son, husband's daughter's son, brother's son, sister's son.

Third. The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce (Mar. 3, 1901, 31 Stat. 1391, c. 854, sec. 1283)."

which incidentally was passed after Section 966 (Title 14, Chap. 3, Sec. 63) Code D. C. 1929, though on the same day, it can be readily apparent that the Court was in error in reading Section 966 into Section 1283.

The Courts are practically uniform in holding that a provision such as the one in question in Section 966 is not *void*, but is at the most merely voidable, to be declared so only upon hearing and by judicial decree, and such marriage may only be declared void by judicial decree during the lifetime of the parties, even had it been celebrated in the District of Columbia.

Park v. *Barron*, 20 Ga. 702.
Tyler v. *Andrews*, 40 Apps. 100.
Mason v. *Mason*, 101 Ind. 25.
Abramson v. *Abramson*, 60 Apps. D. C. 119.

Such statutes are penal and do not render void the marriage of the guilty party celebrated in another State.

9 A. & E. Enc. Law, 2d Ed. 854, cases cited in Note H.

Such is the view taken by the Supreme Court of the United States in the case of Huntington v. Attrill, 148 U. S. 657, p. 674:

"And personal disabilities imposed by the law

of a State, as an incident or consequence of a judicial sentence or decree, by way of punishment of an offender, and not for the benefit of any other person—such as attainder, or infamy, or incompetency of a convict to testify, *or disqualification of the guilty party to a cause of divorce for adultery to marry again*— are doubtless strictly penal, and therefore have no extra territorial operation." (Italics ours.)

Citing—

Story, Confl. Laws 91, 92; Dicey, Domicil, 162;
Folliott v. *Ogden*, 1 H. Bl. 123, 3 T. R. 726;
Logan v. *United States*, 144 U. S. 263;
Dickson v. *Dickson*, 1 Yerg. 110;
Ponsford v. *Johnson*, 2 Blatchf. 51;
Com. v. *Lane*, 113 Mass. 458, 471;
Van Voorhis v. *Brintnall*, 86 N. Y. 18, 28, 29.

8. *The decision of the Court of Appeals also is a clear violation of the fundamental rights of complainant under Article 4, of the Constitution of the United States, requiring that full faith and credit be given to the public acts and records of the State of Florida, and judicial proceedings of the State of Virginia, and also under the Fifth Amendment to the Constitution requiring that complainant, before her rights shall be affected by judicial action shall have first been accorded due process of law, as required by said Fifth Amendment to the Constitution of the United States.*

Article 4, Section 1 of the Constitution reads as follows:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Con-

gress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Fifth Amendment to the Constitution reads as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

So fully have the questions above been discussed herein, in principle, with citations of authorities, that it is deemed unnecessary to repeat the arguments made. It is only proper to repeat the following statement of the facts:

The decision of the Court of Appeals utterly ignored in express terms the effectiveness of the marriage of complainant in the State of Florida, after she had acquired her domicile there in good faith, and likewise refused to find valid her subsequent divorce a *mensa et thoro* from her deceased husband after she had acquired a domicile in Virginia in good faith, the Court of Appeals holding that said marriage in Florida, and its adjudication in Virginia, were immaterial and irrelevant to the property rights set up herein by complainant.

It is also necessary to repeat that closing the doors of the Equity Courts to complainant and placing a ban on her going into such courts in the District of Columbia for the protection of her rights was an express denial to her of due process of law. This was an express denial at the door of the Court, notwithstanding universally recognized principles establishing her right to, not only enter in any court where her rights were affected, but to have her rights in such Court judicially determined. As was said by the Court of Appeals of the District of Columbia in Harlow v. Carroll, 5 App. Cas. D. C. 128, heretofore quoted on page 13 this brief, as follows:

> "There is no such thing as legal outlawry in our American jurisprudence."

9. *That the Court of Appeals further committed error in its said decision in holding that Section 966 of the District of Columbia Code has extraterritorial effect, and that said Section bars the statutory dower of petitioner, when, admittedly on the record, she married her deceased husband while she was domiciled in the State of Florida and became his widow at the time of his death, when she was domiciled in the State of Virginia.*

The above point No. 9 has been fully covered by citations from the American Law Institute Restatement of the Law as to divorce decrees penalizing one of the parties having no extraterritorial effect and further giving to widows under remarriages beyond the jurisdiction of the Court fixing a penalty against a guilty party to a divorce proceeding, all property rights be-

longing to widows irrespective of such previous decree prohibiting remarriage in the jurisdiction granting the same. These authorities will be found under Points No. 2 and No. 3 and will not be reviewed again.

There is no public policy established by the law in the District of Columbia, which warrants the decision by the Court of Appeals.

The policy of the law has been fixed by statute in the District of Columbia, and requires no judicial extension or sanction to clarify or declare it. Only where there is *no* statute and where good morals demand it may the courts establish or declare public policy.

Upon the general subject of "Public Policy", 50 Corpus Juris, 858 we find the following:

> "Public Policy is that principle of the law which holds that 'no one' can lawfully do that which has a tendency to be injurious to the public or against the public good." (Cases cited.)
>
> "Public Policy" has been said to be synonymous with "policy of the law" (49 C. J. p. 1072).
>
> "In a judicial sense, public policy does not mean simply sound policy, or good policy, but it means the *policy of a state* established for the public weal either by law, by courts, or by general consent."

Under Title "Policy of the Law" we quote from 49 Corpus Juris, 1073 as follows:

> "A term synonymous with 'public policy', and difficult to define. It has been considered to refer to the purpose and spirit of the substantive laws of a state whether such laws be found in the Constitution and statutes or in judicial records."
>
> Citing *Johnston* v. *Chicago Great W. R. Co.*, 291 S. W. 120 (See 51 A. L. R. 877, 883).

Where the legislative powers of a given jurisdiction has declared a public policy that declaration is paramount and the only function of the courts is to interpret the reasonable meaning of the legislative enactments.

Quoting from the decision of the Supreme Court of the United States in *Hartford Fire Insurance Co. v. Chicago, M. & St. P. R. Co.*, 175 U. S. 91, wherein that Court quotes with approval from the language of the Supreme Court of Iowa in *Griswold v. Illinois C. R. Co.*, 90 Iowa, 265, we find the following:

> "In the first place, it was said: 'Public policy is variable; the very reverse of that which is the policy of the public at one time may become public policy at another; hence no fixed rule can be given by which to determine what is public policy. The authorities all agree that a contract is not void as against public policy, unless it is injurious to the interests of the public, or contravenes some established interest of society.' So far, the opinion is in precise accord with the opinion of this Court in *Pope Mfg. Co. v. Gormully*, 144 U. S. 224, 233, 36 Law. Ed. 414, 418, 12 Sup. Ct. Rep. 632. The Iowa Court then quoted with approval the saying of Sir George Jessel, M. R. in *Printing & N. Registering Co. v. Sampson*, L. R. 19, Eq 462, 465: 'It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because, if there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into fairly and voluntarily, shall be held sacred, and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider,—that

you are not lightly to interfere with this freedom of contract."

In view of the above authorities it is respectfully submitted that the Court of Appeals of the District of Columbia was utterly unwarranted in attempting to establish by judicial fiat a public policy for the District of Columbia to the effect that the plaintiff herein, while admitted to have been one of the parties to a marriage contract duly celebrated in accordance with the laws of the State of Florida, and one of the parties to a final limited decree of divorce from said marriage, while domiciled in the State of Virginia, by a competent court of such State, shall nevertheless not only have her marriage and its legal adjudication refused recognition in the District of Columbia by the laws of comity, but actually find the doors of the Chancery Court of said District closed to her when she attempts to enter them to assert her rights as the widow of her deceased husband.

Only by a declaration in legislation governing the District of Columbia, by the Congress of the United States declaring that the remarriage of a party found guilty of adultery while previously married could a policy of the law be established for this District, such as that attempted to be declared by the court of Appeals in the instant case. Had Congress made such an attempt it would have been of doubtful constitutionality, but since it did not do so, the rights of plaintiff herein must be recognized as in full force and effect not only because of her legal marriage in Florida, and its adjudication as legal in Virginia in a suit instituted by her deceased husband and lost by him, and won on a cross bill filed by her.

Wherever a remarriage of a person found guilty of adultery in one jurisdiction, and where the penalty is found in the statute against the guilty party only, a refusal to recognize the marriage in the jurisdiction where the decree was passed has been placed upon the ground either that the offending party left the jurisdiction with the wilful purpose to marry in another jurisdiction while domiciled in the original jurisdiction and with the intent to return to the original jurisdiction to live, or where the original jurisdiction had a statute declaring expressly and in terms that any such remarriage would be void wherever celebrated, thereby declaring a public policy against such remarriage.

PART IV

Conclusion

Upon a final analysis the case resolves itself as follows: Petitioner is the *widow* of Daniel Loughran, Jr., admittedly so by appellees. As such widow, according to the statutes in force in the District of Columbia, she is entitled to certain dower rights and rights to share in his personal estate.

The Court of Appeals has taken unto itself the legislative function of writing into Section 966 of the Code the following:

> "But if such guilty party remarry in another State, while domiciled there in good faith, he or she shall forever be barred of his or her courtesy or dower rights and rights to the personal estate of his or her deceased husband or wife, as the case may be."

No citation of authority is necessary to show that

that is within the realm of the legislative branch of the Government, and not the judicial.

"The Congress of the United States has taken it upon itself, while legislating for the District of Columbia, to determine in what way a widow may be barred of her dower rights.

Section 39, Title 14, Chapter 2, The Code of D. C. 1929—

"39. Same; forfeiture of dower by desertion and adultery of wife.—If a wife willingly leave her husband, and go away, and continue with her advouterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coegeion reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action. (13 Edw. I, c. 34, sec. 4, 1285; Kilty's Report p. 213; Alexander's Brit. Stat. 138; Comp. Stat. D. C. p. 36, sec. 165)."

Needless to say Section 966 is silent on this subject.

The effect of the Court of Appeals decision is to absolutely *bar* plaintiff from her dower rights.

By the mode of procedure in the District of Columbia, it is permissible *only* to bring an equitable proceeding to have a widow's dower allotted. The Court has closed its doors to your petitioner. She finds herself in an unenviable position,—that of a widow, and as such entitled to dower and a share of Daniel Longhran Jr.'s personal property,—but by reason of the Court's interpretation of Section 966 of the Code unable to realize on same.

The moment Daniel Loughran Jr. died, leaving petitioner surviving him, her inchoate right to dower became an absolute vested interest. The Court of Appeals by its decision has destroyed that interest and undermined petitioner's right to her interests in her deceased husband's estate. It did the thing which even the legislature was powerless to do, as an impairment of contract.

9 R. C. L. "Dower" Sec. 8, citing:
Strong v. Clem, 12 Ind. 37, 74 Am. Dec. 200.
Swartz v. *Andrews*, 137 Ia. 261, 114 N. W. 888, 126 A. S. R. 285.
McAllister v. Dexter & P. R. Co., 106 Me. 371, 76 Atl. 891, 21 Ann. Cas. 486, 29 L. R. A. (N. S.) 726.
Sutton v. *Askew*, 66 N. C. 172, 8 Am. Rep. 500.

It has taken away from her a vested right, a right of property, which the Constitution protects.

Pritchard v. *Norton*, 106 U. S. 124, 1 S. Ct. 102; 27 U. S. (L. Ed.) 104.

For the reasons above stated, it is respectfully submitted that the writ of certiorari to the Court of Appeals of the District of Columbia should be granted.

Respectfully Submitted,

ROBERT H. MCNEILL,
Attorney for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 565

RUTH LOUGHRAN
Petitioner

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN, AND CHARLES LOUGHRAN,
Trustees of the Estate of Daniel Loughran, Sr.
Respondents

REPLY BRIEF OF APPELLANT

ROBERT H. McNEILL,
Attorney for Petitioner.

Washington Daily Record, Printcraft Building

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REPLY BRIEF OF APPELLANT

I

RESPONDENTS' INCONSISTENT POSITIONS

This reply is submitted to draw the Court's attention to the unwarranted and inconsistent position now

taken by respondents in their brief filed herein entitled "Brief for Respondents."

Neither in the transcript of record nor in the hearing before the Trial Justice, nor in the Court of Appeals, nor before this Court, in their "Brief for Respondents in Opposition to the Petition for Writ of Certiorari" did the respondents ever suggest any defect of jurisdiction in the Trial Court, or in the Court of Appeals, or in this Court until they did so in their brief filed in this Court a few days ago. Then for the first time (Respondents' brief, page 14, paragraph IV) was the suggestion made that the decree herein passed by the Trial Justice, should not have been entered *without evidence*.

Even if there were any merit in this point it will not be considered now since it would be utterly inconsistent with an orderly administration of justice. Such has been the rulings of this Court in innumerable cases, only a few of which will be referred to.

In the case of *Halbert vs. United States*, 75 Law Ed. 1294, opinion by Mr. Justice Van Devanter, this Court said:

> "So far as can be determined from the record the district court rightly applied the rules stated in this opinion. The record does not purport to contain, and evidently does not contain, all the evidence that was produced on the hearing. The statement of it was prepared by counsel for the government and the certificate is that the statement contains 'all the evidence essential to the decision of the questions presented by the appeal of the defendant.' The assignment of errors, which was then before the district court, does not challenge the decision of any question of fact, but

only rulings on questions of law. It is thus rather plain that the statement of evidence contains only so much of the evidence as was deemed essential to the decision of the latter. *We now are asked to consider questions not raised by the assignment of errors and which cannot be properly decided without appropriate assurance that the record contains all the evidence that is material to their decision. We must decline to consider them*" (Italics ours).

In the case of *Bradley vs. Public Utilities Company*, 77 Law Ed. 1057, a contention was made that a certain order of the Interstate Commerce Commission was void because supported by insufficient evidence. No such point was made in the Trial Court. In passing on the proposition this Court said:

> "Moreover, no such objection is set forth in the statement as to jurisdiction filed pursuant to Rule 12."

Therefore, the point was refused consideration.

In the case of *Wood vs. Wilbert's Sons Shingle & Lumber Company*, 57 Law Ed. 265, the Court said:

> "There are some minor questions presented by the brief of counsel of which we must first dispose. It was contended in the court below that appellees, by entering a formal appearance, waived their right to object to the jurisdiction. But they at the same time filed an exception to the jurisdiction, and the district court decided that the two papers should be considered together, and, so considering them, held that they could not be regarded as a consent on the part of the defendants to submit themselves to the jurisdiction of the

court. The ruling is not asigned as error. It is urged further that neither the exception nor the demurrer complied with the thirty-first equity rule, in that the appellees did not make affidavit that they were not interposed for delay. *It is sufficient to answer that the objection was not made in the court below and is not assigned as error on this appeal. We therefore pass to the consideration of the question certified*" (Italics ours).

It is too late to raise a point if not covered by an assignment of error (as here) and review is limited to errors assigned.

Connell Bros. Co. vs. Diedrichsen & Co., 213 Fed. 737, 130 C. C. A. 251.

Parties may not change their position on appeal and present questions not presented below.

Pope vs. United States, 289 Fed. 313.

To similar effect see *Gustav Holgren vs. U. S.* 54 Law Ed. 861.

In the case of *Old Nick Williams Co. vs. United States*, 215 U. S. 541, this Court said:

". . . errors not assigned will be disregarded . . ."

In 2 *Ruling Case Law*, p. 159, section 154, the general rule as to the necessity for giving the lower courts opportunity to pass upon questions relied upon is stated.

"NECESSITY FOR ASSIGNMENT—It is

> well recognized that the appellant must assign errors relied on for reversal; for the purpose of informing the appellate court and the adverse party of the matters relied on as error. This rule is applicable in the case of an appeal from an intermediate appellate court, and in order to have its action in dismissing an appeal reviewed, such action must be assigned as error. In accordance with this principle a question not presented by an assignment of error as required by the rules of the court will not be reviewed. This has been held to apply to all cases, whether they involve questions that have been passed on by the trial court, or new questions that may be raised for the first time on appeal, such as the failure of the complaint to state a cause of action."

The above represents the uniform holdings of this Court. In certain exceptional cases, to avoid some grave injustice, this court may notice a plain error not assigned or specified to the end that some principle of abstract justice may be preserved.

In the Court below the fullest opportunity was afforded appellants (respondents) to object to the sufficiency of the pleadings and to except to the court's passing the decree appealed from. No such exception was taken. The respondents acquiesced in the court's action and appealed from the decree on other grounds, to wit: that the decree gave to the petitioner rights in her husband's estate alleged to be denied to her by Code Section 966. No other grounds were stated. See assignment of errors (Record p. 27 and 28). The same position was taken in the brief of respondents in the Court of Appeals. Thereafter the same position was taken in this court in the *brief for respondents in opposition to the petition for writ of certiorari*. No men-

tion of a want of jurisdiction in the Trial Justice to pass the decree appealed from was made in that brief. No mention of the point was even made. Neither the Trial Justice nor the Court of Appeals had an opportunity to pass on the proposition.

No issue involving the power of the Court to pass the decree was raised, until the case reached this Court by certiorari when the point was first suggested in respondents' brief filed a few days ago.

In the case of *J. E. Hathaway & Co. vs. United States*, 63 Law Ed. 707, the court, speaking by Mr. Justice Brandeis, at page 709 said:

> "Third. Claimants further contend that the credit of time allowed by the government on account of the extra-work should have been greater. *On this matter no issue appears to have been raised below, and it is obviously not open for review here*" (Italics ours).

The propriety of the action of counsel for respondents in requesting the court to consider a matter never before presented to the trial court, the Court of Appeals, or to this Court is here pertinent. It has been shown that by the unanimous opinions and decisions of this Court that such contention should not be brought here for consideration, unless the same has been previously presented to and frankly and fully stated to the tribunals hearing the case prior to its reaching the Supreme Court.

Another complete negative reversal of position by the respondents is found in their brief herein filed. Heretofore they have relied upon the decision of the Court of Appeals of this jurisdiction in the case of

Olverson vs. Olverson, 54 Apps. D. C. 48. In their brief herein that case is merely mentioned in a citation with fifteen other cases. Obviously, this submergence of the case of Olverson vs. Olverson is because of its utter inapplicability as an authority in support of the decision herein. As stated in our *petition and brief for writ of certiorari* herein, every substantial principle governing marriage, as declared in the Olverson case, is diametrically different in its application from the instant case. These striking differences are set out in full in our discussion of the Olverson case (pages 33, 34 and 35 our *petition and brief*). It is not surprising that respondents have abandoned this case as an authority. The amazing thing is that the Court of Appeals in deciding unfavorably upon petitioner's contention herein said that this case was ruled by the decision in the Olverson case, when, as stated in our brief herein on page 33,

> "Every principle that justified the Olverson case is absent in the present case."

II

SUPPLEMENTAL AUTHORITIES

As the record herein disclosed, the marriage of petitioner, under which she claims participation in her husband's estate in the District of Columbia, occurred in the State of Florida. In a recent investigation of the decisions of the State of Florida, as to the marital status of persons at one time residing in Florida who thereafter removed therefrom and married elsewhere and later claimed interests in lands and properties in

Florida, we have read with much interest the decision of the Supreme Court of Florida in the case of *Whittington vs. McCaskill*, 65 Fla. 162; 61. So. 236, and submit the following analysis of the decision in that case.

Elizabeth Anderson, the daughter of the plaintiff, who had one-eighth or more negro blood in her veins, departed this life intestate, seized of the land in question; after acquiring title to the land Elizabeth Anderson moved to Leavenworth, Kansas, where she married W. J. Grooms, a white person, with whom she lived six years. She died there. After her death her husband, W. J. Grooms, as her only heir at law, conveyed the property to the defendant.

The Court stated the question presented, as follows:

> Q. "As we understand it, the sole point presented for our determination, as it will be decisive of this case, is as to whether or not the marriage between Elizabeth Anderson and W. J. Grooms in the State of Kansas, where such marriages are recognized as valid, will be held invalid in this State, so as to prevent Grooms from inheriting as the sole heir at law of Elizabeth Anderson . . ."

The statute of Florida prescribed:

1. Marriages between white and negro, or white person and a person of negro descent to the fourth generation, inclusive, are hereby forever prohibited.

2. Unlawful for any white male person residing or being in this state to intermarry with any negro female person; unlawful for any white female person residing or being in this state to intermarry with any negro male person; every such marriage solemnized

in contravention of this section shall be null and void, and the issue, if any, of such surreptitious marriage shall be regarded as bastard and incapable of having or receiving any estate by inheritance.

The statute makes it a felony for violation of the foregoing section.

Plaintiff contended that the foregoing made it impossible for Grooms to inherit from his wife. Florida statute provided for his inheritance as follows: *Sec.* 2295, *Gen. Sts.* 1906:

> "If there be no children or their descendants, and the decedent be a married woman and her husband survive her, all the property, real or personal, shall go to the husband."

Held:

> "We are of the opinion that this quoted section of the Constitution and the two quoted statutes fail to support this contention. To hold otherwise we would have to read something therein that is not there. Neither Grooms nor Elizabeth Anderson resided or was in this State at the time of their marriage, nor did they reside therein subsequent thereto. Neither does it appear that she removed from Florida for the purpose of contracting such marriage with the intent to evade our statute . . . Since the marriage was valid in the State of Kansas, where it was consummated and where the parties continued to reside until the death of the wife, we are of the opinion that neither our Constitution nor the statutes, referred to above, have any applicability thereto."

It will be noted that the Supreme Court of Florida

recognized and declared valid the marriage of the two persons involved in said cause, although had the marriage occurred in Florida it would not only have been illegal, but criminal, the marriage being one between a white person and a negro. Nevertheless, having occurred outside the jurisdiction where such marriage was lawful the Florida Supreme Court held that it was lawful in Florida, and that property would pass just as though the marriage had been permissible under Florida law, stating:

> "Since the marriage was valid in the State of Kansas, where it was consummated and where the parties continued to reside until the death of the wife, we are of the opinion that neither our Constitution nor the statutes, referred to above, have any applicability thereto."

In no State where marriages have been prohibited and declared void, and even where they are punishable, have recognition of such marriages been refused *when* the marriage was legally performed in another jurisdiction where the parties were then domiciled and where the only question involved was the right of the surviving spouse to take property left by the deceased spouse in accordance with the principles of descent and distribution.

A very recent significant decision of the Supreme Court of California, *Estate of Wood*, 137 Cal. 129, is now drawn to the attention of the Court, an analysis of the case being as follows:

Plaintiff, claiming to be the surviving wife of the deceased, Joseph M. Wood, sought the family allowance provided by the laws of California. It was ob-

jected to on ground of her marriage being a nullity. Lower court denied relief.

Appellant and Wood were married in Reno, Nevada, on January 1, 1898, the marriage being valid according to the laws of that State. No evidence to show intent to violate California statute was offered. Both parties to the marriage were residents of California at the time of the wife's divorce from her former husband on August 19, 1897. *Section* 61, of the *Civil Code of California* provided:

> "A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:
>
> 1. The former marriage has been annulled or dissolved: provided, that in case it be dissolved, the decree of divorce must have been rendered and made at least one year prior to such subsequent marriage."

Appellee contended that appellant was not absolutely divorced until one year after the decree of divorce was rendered.

Judgment reversed.

Held (Justice Granville) (page 135):

> "Section 61, being general legislation prohibiting marriages between certain persons, has no extraterritorial operation . . . It cannot be possible that the legislature by this section attempted to declare what particular marriages contracted in the State of Nevada, or any other place in the world, would be invalid and void . . ."

Page 131:

> "At the outset it may be said that the policy of the law of the civilized world is to sustain the validity of marriage contracts. In this case an opposite conclusion to that declared by the majority of the Court would nullify hundreds of marriages, place the stamp of legitimacy upon scores of children, and change the source of title to great property interests. Unless the law points plainly to that end, such a conclusion should not be declared. And, as the Court views the law, it is not plain to that, but plain to the contrary . . ."

Beatty, Chief Justice, concurring, p. 137:

> "I concur in the judgment of reversal. *If the appellant is the widow of Joseph M. Wood, she is entitled to a family allowance.* If the Reno marriage was lawful in Nevada, it is valid here, and if at the date of the Reno marriage plaintiff was an unmarried person, the marriage was lawful in Nevada . . ." (Italics ours).

Ruling Case Law, Volume 5, p. 1002, Sec. 82:

> "No State goes so far as to refuse to recognize the validity of a marriage of white and colored people performed elsewhere, when the only question involved is the right to inherit property in the State having a prohibitory statute."

If, to state the proposition in the strongest terms, the statute in the District of Columbia had expressly declared that petitioner's marriage in Florida, under the circumstances stated in her petition was not only

prohibited but deemed void, nevertheless such marriage, having been celebrated legally in Florida, would nevertheless have to be recognized here. Marriage lawfully celebrated in another State, after the acquisition of a new domicile, is legal and must be so recognized in all other jurisdictions.

We refer again to the overwhelming collection of authorities brought forward and analyzed for the Court's information in Part II of our petition for certiorari herein, pages 7 to 53 inclusive, and repeat that these authorities establish the conclusion that the decision of the Court of Appeals herein was erroneous in every substantial conclusion: that it did violence to the well-settled law governing marriages in this jurisdiction and in the States; that it was inconsistent with the Court's own decisions and undertook to lay down a new and strange doctrine as to domestic relations for the City of Washington, utterly unknown to the laws of any State in the Union, and revolutionary in the history of the Courts of the District of Columbia. For such reasons it is respectfully submitted that the decree signed by Mr. Justice Bailey of the Supreme Court of the District of Columbia should in all respects be affirmed and the decision of the Court of Appeals reversed.

Robert H. McNeill,
Attorney for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 565

RUTH LOUGHRAN,
Petitioner,

v.

JOHN LOUGHRAN, JOSEPH LOUGHRAN AND CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,
Respondents

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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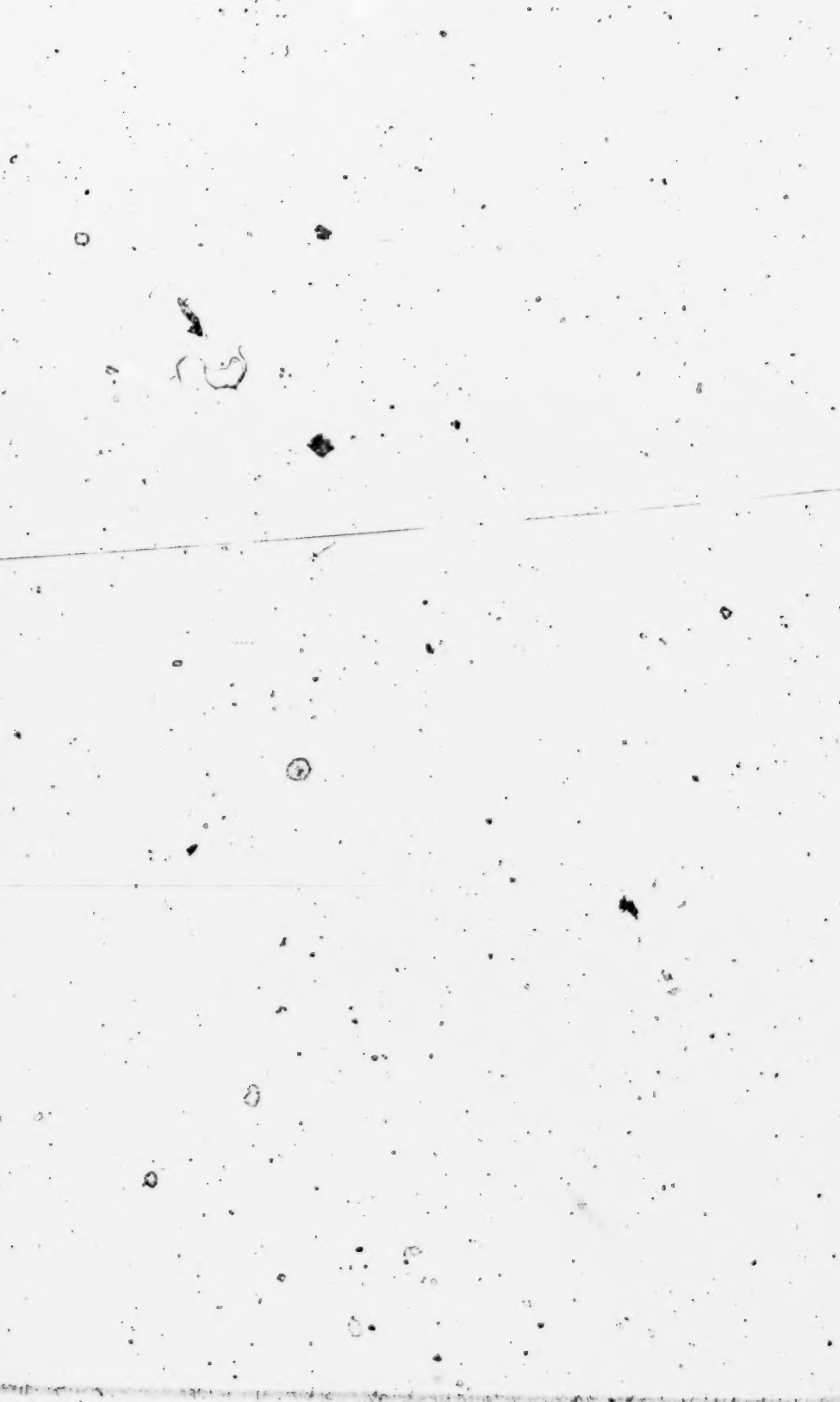

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In The

Supreme Court of the United States

October Term, 1933

No. 565

Ruth Loughran,
Petitioner,

v.

John Loughran, Joseph Loughran and Charles Loughran, Trustees of the Estate of Daniel Loughran, Sr.,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

I

Opinion Below

The opinion of the Court of Appeals of the District of Columbia (R. 32-35) is reported in 66 Fed. (2d) 567.

Jurisdiction

The judgment of the Court of Appeals was entered June 26, 1933, and a petition for rehearing denied

August 8, 1933. The petition for certiorari was filed October 31, 1933. While petitioner does not so state, he presumably invokes the jurisdiction of this Court under Section 240-A of the Judicial Code, as amended by the Act of February 13, 1925.

Statute Involved

Section 966, page 279, District of Columbia Code 1924, restated in Title 14, Section 63, page 143, District of Columbia Code, 1929:

> "A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage; Provided, *That in such case the innocent party only may remarry,* but nothing herein contained shall prevent the remarriage of the divorced parties to each other." (Italics ours.)

Question Presented

Whether petitioner, whose first husband obtained a divorce from her in the District of Columbia on the ground of adultery, could, after marrying the named corespondent in Florida, maintain a suit in the District of Columbia to establish dower in her deceased second husband's (her paramour's) estate notwithstanding such claim is directly founded on a violation of the above quoted statute of the District of Columbia.

The Facts

On December 12, 1924, the petitioner's first husband, Henry Daye, obtained in the Supreme Court of the District of Columbia, a decree of absolute divorce from her on the grounds of her adultery with Daniel

Loughran, Jr., who was named corespondent in that cause (R. 2-18). Thirteen months later (January 16, 1926), and notwithstanding the provisions of section 966 of the District of Columbia Code (1924), allowing only the innocent party to remarry, she married Daniel Loughran, Jr., the named corespondent in the Daye suit, in Florida (R. 2-3-18). Eighteen months later, July 16, 1927, Daniel Loughran, Jr., filed a suit for divorce against petitioner in Virginia. She filed a cross-bill and on November 8, 1929, the prayers of the cross-bill were granted and petitioner was allowed a divorce a *mensa et thoro* from Daniel Loughran, Jr. (R. 13-14). September 6, 1931, Daniel Loughran, Jr., died, leaving an interest in certain real estate located in the District of Columbia, which he had disposed of by will (R. 5).

Petitioner filed suit for dower, averring (R. 9-10) that under the Code of Laws of the District of Columbia she was entitled to have and receive as the widow of Daniel Loughran, Jr., a one-third part of the net rent, issues and profits of all real estate or interest therein of which Daniel Loughran, Jr., was seized at the time of his death. The respondents averred in their answer (R. 24-25) that she had neither legal right nor equity in her complant, and was not entitled to the extraordinary relief sought. They averred that prior to her marriage, as alleged, to Daniel Loughran, Jr., she was and had been for some years theretofore the lawful wife of one Henry Daye and that he, as the husband of this complainant, then known as Ruth Daye, filed in the Supreme Court of the District of Columbia, his petition for an absolute divorce from this complainant, in Equity cause No. 43,202. Respondents made part of their answer to the bill of complaint, the petition, answer and decree in said cause aforesaid as if

fully set out (R. 25). Respondents further said that in said cause Daniel Loughran, Jr., was named corespondent and that on December 12, 1924, the Court decreed a final and absolute divorce to Henry Daye against and from his then wife and petitioner herein, Ruth Daye, by reason of her adultery with the corespondent Daniel Loughran, Jr. Respondents further averred that by, under and in accordance with Section 966 of the Code of Laws of the District of Columbia this complainant was denied the right of remarriage (R. 25). They stated that petitioner directly contrary to and in violation of the terms of the statute married Daniel Loughran, Jr., the corespondent in the proceedings hereinbefore named. They alleged that having openly and in utter disregard of the prohibition contained in said statute violated the terms thereof, she cannot now return to this jurisdiction and the Supreme Court of the District of Columbia and make application for relief with respect to the very situation and relationship which she could and did create only in direct violation of the prohibitory mandate of the statute, in full force and effect in this District and which the Court was bound to respect and administer. Respondents averred the declaration by the Congress of the United States in Section 966 was a legislative declaration of a general public policy to govern in this District and which should govern and control the conduct of those found guilty of adultery in the courts thereof. Respondents averred that petitioner was without right to ask or expect to receive from the courts of the District of Columbia, and especially in equity, the extraordinary relief and assistance which she prayed in her said amended bill, and that she should be left with respect to that situation and relationship, which she created by violation of the law of this District,

where her own misconduct in violating said law had placed her (R. 25).

Inasmuch as the cause was heard upon amended bill and answer, the only question before the trial court and the Court of Appeals was the validity of respondents' contention as set forth in paragraph 15 of the answer, and as set forth on pages 24 and 25 of the record. The Court of Appeals unanimously ruled such contention to be the sound public policy of the District of Columbia. Petition to this Court for certiorari followed.

ARGUMENT

I

The Decision of the Court of Appeals of This District Construing a Federal Statute of Local Application Is Not to Be Overturned Unless Obviously Erroneous.

The question involved herein is purely local. We invite the Court's attention to the allegation of petitioner (R. 2) that she is a resident of the District of Columbia and further that the property herein involved in which she seeks a dower interest is situate in the District of Columbia. This Court announced in *Barrett* v. *Failing*, 111 U. S. 523, 28 L. Ed. 505, 506, that the law of the place in which the real estate is located is controlling.

> "Whether a statute of one state, securing or denying the right of dower in case of divorce extends to a divorce in the Court of another state having jurisdiction of the cause and the parties depends very much *upon the terms of the statute and upon its interpretation by the courts of the*

state by the legislation of which it is passed and in which the land is situated.''

To the same effect in *Thomas* v. *Woods* (C. C. A. 8th, 1909) 173 Fed. 525, 26 L. R. A. (N. S.) 1180-1189, wherein the Court said:

> "That right (dower) is fixed by the laws of the state in which the property is situated."

In *Van Blaricum* v. *Larson,* 205 N. Y. 355, 98 N. E. 488, 41 L. R. A. (N. S.) 219, 222, the New York Court of Appeals said:

> "Her right to dower in lands here, of course, *is a matter to be determined by the courts of this jurisdiction.''*

The Court of Appeals of the District of Columbia has announced the public policy of the District of Columbia relative to the rights of dower to those who violate the statutes of the District of Columbia and ignore the mandate of its courts, *viz.,* that the guilty party in a divorce proceeding shall not remarry.

The Court of Appeals correctly announced the law when it said (66 F. [2d] 568):

> "The single question for determination here is whether or not the plaintiff is entitled to her dower interest in the estate of Daniel Loughran, Jr. We are of the opinion that the decree of absolute divorce obtained by her first husband, Daye, on the ground of adultery bars the right of plaintiff to recover in this action. Section 966, D. C. Code 1924 (D. C. Code 1929, T. 14, Sect. 63) provides as follows: 'A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: Provided, *that in such case the innocent party only*

may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other.' It is the special duty of courts to discourage infractions of the laws and *fixed policies of the particular division of the nationdl domain to which they are accredited,* and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts, without bringing such laws and policies into contempt. Judicial tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction.

"We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of Section 966, should not be permitted to take advantage of his or her own wrong, and should be left as found in the relation unlawfully undertaken."

Much argument in petitioner's brief is devoted to the claim that the public policy of the state cannot be declared by judicial decision. The contrary is the law. See *Vidal et al.* v. *Girard's Executors,* 2 How. 127, 197, 11 L. Ed. 205, 234; *Hartford Fire Ins. Co.* v. *C. M. & St. P. R. Co.,* 175 U. S. 91, 100, 44 L. Ed. 85, 98. The question, however, is beside the point in the present case as obviously it is not the decision of the Court of Appeals of the District of Columbia which establishes the public policy of this jurisdiction that after a divorce only the innocent party may remarry, but a statute plain in its terms enacted by Congress. Certainly it was competent for the Court of Appeals of this jurisdiction to construe that statute and determine the effect intended by Congress. Applying the statute to a marriage contracted by the guilty party outside the District of Columbia as well as to

a marriage contracted within the District of Columbia is not an unreasonable construction of the statute. This court can take judicial notice of the fact that the District of Columbia is less than ten miles square. Unless the statute applies to marriages contracted outside of the District of Columbia as well as inside the District, the statute would have little or no effect inasmuch as the guilty party could evade it by a street-car ride to Virginia on the one side or Maryland on the other. Dower being the result of and an incident to marriage and being governed by the law of the state wherein the property is located, under the authorities already cited, it was certainly competent for Congress to say what persons are dowable and as a result of what marriages, no matter where the marriage was contracted. This is all Congress has done in this case.

The argument of petitioner that a marriage valid where entered into is valid everywhere is of no pertinency in the present case. Assuming it to be true, for the sake of argument, it does not follow that an incident to marriage such as dower may not be given or withheld in a given locality according to terms or conditions fixed by the local legislature. Thus Congress acting as the local legislature for the District could provide a classification of marriages as to some of which it would grant the right of dower in the District of Columbia, as to others of which it would deny it. This is what Congress has done in the present case; the statute as interpreted has denied the right of dower to the guilty party in a divorce suit based on adultery. This in no way violates the so-called axiom that a marriage valid where entered into is valid everywhere, even assuming that this saying is as ironclad as contended for by petitioner.

II

A Court of Equity Has the Right to Deny Equitable Relief to One Who Has Deliberately Created a Situation Contrary to the Public Policy of the Lex Fori.

Petitioner herein seeks the remedy of the District of Columbia Court, whose decree she has flouted and ignored. She based her claim for dower upon a marriage prohibited by the statutes of the jurisdiction in which she seeks relief.

The principle which respondents advance and which was adopted by the lower court is that no one can enter the courts of the District of Columbia and seek the assistance of the statutes of the District of Columbia relative to dower upon a status born as a result of the contravention of the laws of the District of Columbia by petitioner.

Ample authority for this position is found in the following cases:

Armstrong v. *Toler*, 11 Wheat. 258, 260, 6 L. Ed. 468;

Hall v. *Coppell*, 7 Wall. 542, 558, 19 L. Ed. 244.

Oscanyan v. *Arms Co.*, 103 U. S. 261, 267, 26 L. Ed. 539;

Higgins v. *McCrea*, 116 U. S. 671, 686, 6 Sup. Ct. 557, 29 L. Ed. 764;

Hunter v. *Wheate*, 53 App. D. C. 206, 289 Fed. 604;

Olverson v. *Olverson*, 54 App. D. C. 48, 293 Fed. 1015;

Morck v. *Abel*, 3 Bos. & P. 35;

Collins v. *Blantern*, 1 Smith's Lead. Cases, pt. 2, p. 716;

Vandyck v. *Hewitt*, 1 East. 96;

Clugas v. *Penaluna*, 4 Term Rep. 466;
Weymel v. *Read*, 5 Term Rep. 599;
Montefiori v. *Montefiori*, 1 W. Black. 363;
Wilde v. *Wilde*, 37 Neb. 891, 56 N. W. 724;
Lanktree v. *Lanktree*, 42 Cal. App. 648, 183 Pac. 954, 955;
Beard v. *Beard*, 65 Cal. 354, 4 Pac. 229;

The language of this court in *Higgins* v. *McCrea*, *supra*, is peculiarly pertinent here:

> "If from the plaintiff's own stating, or otherwise, the cause of action appear to arise ex turpi causa, or the transgression of a positive law of the country, then the court says he has no right to be assisted. It is upon that ground the court goes, not for the sake of the defendant but because they will not lend their aid to such a plaintiff."

In *Oscanyan* v. *Winchester Co.*, 13 Otto 261, 26 L. Ed. 539, 543, this court said:

> "The defense is allowed, not for the sake of the defendant *but of the law itself*. The principle is indispensable to the purity of its administration. *It will not enforce what it has forbidden and denounced*. The maxim, ex dolo malo non oritur actio, is limited by no such qualification. The proposition to the contrary strikes us as hardly worthy of serious refutation. Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect. A stipulation in the most solemn form, to waive the objection, would be tainted with the vice of the original contract, and void for the same reasons. Wherever the contamination reaches it destroys. *The principle to be extracted from all*

the cases is, that the law will not lend its support to a claim founded upon its violation.'' See, also, *Holman* v. *Johnson*, 1 Cowp. 343. (Italics ours.)

No principle seems to be better settled than that no court will lend its aid to one who founds his cause of action upon an illegal act. The petitioner's position was created by reason of her violation of Section 966 of the District of Columbia Code (1924), a positive law of the District of Columbia. Upon that ground alone the court refused to lend to her its aid. The status she created was prohibited by law.

In *Hall* v. *Coppell*, 7 Wallace 542, 19 L. R. A. 248, this Court said:

> "The law will not lend its support to a claim founded upon its violation."

Considering these cases, it is submitted that the Court below was correct when it said (R. 34):

> "It is the special duty of courts to discourage infractions of the laws *and fixed policies of the particular division of the national domain to which they are accredited*, and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts, without bringing such laws and policies into contempt. Judicial tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction. * * * We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of Section 966, should not be permitted to take advantage of his or her own wrong, and should be left as found in the relation unlawfully undertaken." (Italics ours.)

III

Conclusion

The laws of the District of Columbia were correctly interpreted by the Court of Appeals of the District of Columbia, consonant with the decisions of this Court. The case was correctly decided below. The petition should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 565

RUTH LOUGHRAN, *Petitioner*,

v.

JOHN LOUGHRAN, JOSEPH LOUGHRAN and CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR., *Respondents*.

On Writ of Certiorari to the Court of Appeals of the District of Columbia

BRIEF FOR RESPONDENTS

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In The

Supreme Court of the United States

October Term, 1933

No. 565

Ruth Loughran, *Petitioner,*

v.

John Loughran, Joseph Loughran and Charles Loughran, Trustees of the Estate of Daniel Loughran, Sr., *Respondents.*

BRIEF FOR RESPONDENTS

Opinion Below

The opinion of the Court of Appeals of the District of Columbia (R. 32-35) is reported in 66 F. (2d), page 567.

Jurisdiction

The judgment of the Court of Appeals was entered June 26, 1933. A petition for rehearing was denied August 8, 1933. A petition for certiorari was filed October 31, 1933. The jurisdiction of this Court rests upon Section 240-A of the Judicial Code as amended by the Act of February 13, 1925.

Statute Involved

Section 966, page 279, District of Columbia Code 1924, restated in Title 14, Section 63, page 143, District of Columbia Code, 1929:

> "A divorce from the bond of marriage may be granted only where one of the parties has committed adultry during the marriage; Provided, *That in such case the innocent party only may remarry*, but nothing herein contained shall prevent the remarriage of the divorced parties to each other." (Italics ours.)

Question Presented

1. Whether upon a hearing on Bill and Answer, when the Answer denies the allegations of the Bill to the effect that the remarriage in Florida of a guilty party in a divorce proceeding was in good faith, and the allegations as to a domicile or residence in Florida in good faith are likewise denied, the courts of the District of Columbia are required to disregard Sec. 966 D. C. Code above quoted and to recognize the Florida marriage and award dower.

Outline of Argument

This case was heard on Bill and Answer. As the Answer denied that petitioner became a bona fide resident of Florida, and that the marriage in Florida was in good faith, the only question submitted to the Trial Court was whether a residence in Florida acquired in bad faith, and a marriage in bad faith, i.e., with intent to evade the prohibition of Section 966 D. C. Code against the guilty party to a divorce suit remarrying, must be recognized by the District of Columbia courts. If the good faith of the Florida domicile and marriage is denied, the case presented to the Trial Court was identical with that of *Olverson* v. *Olverson*, 54 App.

D. C. 48, whose decision the Court below merely followed:

Section 966 D. C. Code announces the public policy of the District of Columbia. The Full Faith and Credit clause does not require the courts of this District to recognize a marriage in violation of the public policy of the District of Columbia itself. The good faith of the alleged residence in Florida being denied, the petitioner, so far as the case presented to the Trial Court was concerned, must be taken as domiciled in the District of Columbia. Section 1285 of the D. C. Code impliedly makes the foreign marriage of one domiciled in the District, who is forbidden to remarry, null and void.

A Court of Equity has the right to deny equitable relief to one who has deliberately created a situation contrary to the public policy of the *lex fori*. The "valid where performed, valid everywhere doctrine" has no application herein.

The Facts

This cause was heard in the Supreme Court of the District of Columbia holding an *Equity Court*, upon the motion of the complainant to set the cause for hearing on bill and answer (R. 25). Before advising the Court of the averments of the bill and answer, we invite the Court's attention to Equity Rules 29 and 33 of the Supreme Court of the District of Columbia:

Rule 29:

> "The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill, omitting any mere statement of evidence and avoiding any general denial of the averments of the bill, but specifically admitting or denying or explaining the facts upon which the plaintiff relies,

unless the defendant is without knowledge, in which case he shall so state, *such statement operating as a denial.*"

Rule 33:

"Exceptions for insufficiency of an answer are abolished. But if an answer set up an affirmative defense, set off, or counter-claim the plaintiff may, upon five days notice, or such further time as the court may allow, test the sufficiency of the same by motion to strike out. If found insufficient but amendable the court may allow an amendment upon terms, or strike out the matter."

The bill of complaint alleged the petitioner to be a resident of the District of Columbia and a citizen of the United States; that the defendants were citizens of the United States and residents of the District of Columbia—the capacity in which they were sued. It alleged that on December 12, 1924, the petitioner was divorced in the Supreme Court of the District of Columbia from her then husband, Henry Daye, and that a year or more prior to the granting of the divorce she had removed from the District of Columbia and made her home and residence in the State of Florida and that on January 16, 1926, she was married in Florida (R. 1-2). It was alleged that the marriage of complainant and Daniel Loughran, Jr., on January 16, 1926, in the State of Florida was in all respects a marriage in good faith and was duly celebrated in accordance with the laws of Florida and entitled to full faith and credit in the District of Columbia (R. 2). The respondents answered that they were without knowledge as to such allegations (R. 17), which under the aforementioned rule of Court operated as a denial that the marriage in Florida was in good faith.

Complainant alleged she resided in Florida with Daniel Loughran, Jr., from the time of her marriage until July 1,

1927, at which time Daniel Loughran, Jr., established a residence in Virginia and there wrongfully instituted proceedings against complainant for an absolute divorce. Complainant filed a cross-bill, which was granted (R. 2-12). These allegations were denied (R. 17).

Complainant alleged in paragraph five of her bill (R. 2-3) the legality of the Florida marriage, the limited divorce and alimony granted to petitioner by the Virginia Court and that both were entitled to full faith and credit in the District of Columbia and the effect of the Virginia decree upon the estate of Daniel Loughran, Jr. (R. 3).

The respondents answered that such allegations were argumentative and conclusions of law requiring no answer (R. 17).

Daniel Loughran, Jr., died possessed of certain real estate located in the District of Columbia and his will was filed for probate in the Supreme Court of the District of Columbia. The complainant protested the admission of the will to probate, raising the question of the domicile of Daniel Loughran, Jr., and also challenging his mental competency (R. 4-5). The answer admitted the death of Daniel Loughran, Jr., and the filing of a petition for the probate of his will, and averred that the petitioner attacked the jurisdiction of the District of Columbia Court, because of the questioned domicile of the deceased. Nevertheless, the complainant requested the Equity branch of the Supreme Court of the District of Columbia to exercise its jurisdiction in said estate (R. 20).

The respondents averred in their answer (R. 23-24) that she had neither legal right nor equity in her complaint, and was not entitled to the extraordinary relief sought. They averred that prior to her marriage, as alleged, to Daniel Loughran, Jr., she was and had been for some years theretofore the lawful wife of one Henry Daye and that he, as the husband of petitioner, then known as Ruth Daye, filed in the Supreme Court of the District of Columbia, a

petition for an absolute divorce. Respondents made part of their answer to the bill of complaint, the petition, answer and decree in said cause aforesaid as if fully set out (R. 24). Respondents further said that in said cause Daniel Loughran, Jr., was named co-respondent and that on December 12, 1924, the Court decreed a final and absolute divorce to Henry Daye from his then wife and petitioner herein, Ruth Daye, by reason of her adultry with the co-respondent Daniel Loughran, Jr. Respondents further averred that by Section 966 of the Code of Laws of the District of Columbia this complainant was denied the right of remarriage (R. 24). They averred that petitioner directly contrary to and in violation of the terms of the statute married Daniel Loughran, Jr., the co-respondent in the proceedings hereinbefore named, and that having openly and in utter disregard of the prohibition contained in said statute violated the terms thereof, she cannot now return to the Supreme Court of the District of Columbia and make application for relief with respect to the very situation and relationship which she could and did create only in direct violation of the prohibitory mandate of the statute which was in full force and effect in the District of Columbia and which the trial Court was bound to respect and administer. Respondents further averred that the declaration by the Congress of the United States in Section 966 was a legislative declaration of a general public policy to govern in this District and which should govern and control the conduct of those found guilty of adultry in the courts thereof. Respondents averred that petitioner was without right to ask or to expect to receive from the courts of the District of Columbia, and especially in equity, the extraordinary relief and assistance which she prayed in her bill, and that she should be left with respect to that situation and relationship, which she created by violation of the law of this District, where her own misconduct in violating said law

had placed her (R. 24). The Petitioner moved for hearing on bill and answer. Petitioner's motion was as follows:

> "Now comes the complainant by her attorney and moves to set this cause for hearing on bill and answer"

(R. 25). Upon such hearing the trial court entered its decree (R. 26).

The Court granted the motion and the case was so heard.

ARGUMENT

I.

As the Answer Denied That Plaintiff Became a Bona Fide Resident of Florida, and That the Marriage in Florida Was in Good Faith, the Only Question Submitted to the Court Is Whether a Residence in Florida Acquired in Bad Faith, and a Marriage in Bad Faith, Must Be Recognized by the District of Columbia Courts.

The present case was heard upon Bill and Answer (R. 25, 32). As already seen from the statement of facts in the present brief (p. 4), plaintiff in paragraph 3 of her Bill (R. 1, 2) alleged that a year or more *prior* to her divorce from Daye, she removed from the District of Columbia and made her home and residence in Florida, in which State "while a bona fide resident thereof" she married Loughran (R. 2).

In paragraph 3 of the Answer (R. 17) respondents averred that they were without knowledge as to these allegations.

In paragraph 5 of the Bill plaintiff averred that her marriage to Loughran in Florida "was in all respects a marriage in good faith." As to this allegation respondents in paragraph 5 of the Answer (R. 17) averred that this alle-

gation was argumentative and but a conclusion of law which required no answer.

Under Rule 29 of the Equity Rules of the Supreme Court of the District of Columbia, the averment that defendant was without knowledge operated as a denial. It should be noted that there is no allegation in the Bill that plaintiff established a *domicile* in Florida; it is merely averred that she removed thereto and made her home and residence therein (Par. 3, R. 1-2). There is no direct allegation in the Bill that she removed to Florida in good faith and not for the purpose of attempting to evade and circumvent the prohibition of Section 966 of the District of Columbia Code against her remarriage. There is only the allegation that "while a bona fide resident" of Florida she married Loughran (Par. 3, R. 2).

Even if the allegation that "while a bona fide resident" of Florida she married Loughran is not a conclusion, and even if it is sufficient to allege that in good faith she removed to Florida and established her domicile there and there married Loughran, it still stands denied on the present record (a) that she removed to Florida and established her domicile or residence there in good faith and not for the purpose of evading the District of Columbia law; (b) that she there married Loughran in good faith.

It is unquestioned that as of the date of the decree of divorce against plaintiff, December 12, 1924 (R. 1), plaintiff was domiciled in and a resident of the District of Columbia. Her domicile was necessarily that of her then husband, Daye. The present petition alleges she is *now* a resident of the District of Columbia (R. 1).

Defendants in answering plaintiff's bill herein made a part of their answer the proceedings in the divorce suit of plaintiff's husband, Daye, against her in the Supreme Court of the District of Columbia, Equity No. 43202 (R. 23). This suit was filed October 20, 1924, and alleged that both plaintiff and defendant (the plaintiff herein) were residents of

the District of Columbia on that date. Plaintiff herein was personally served in that suit in the District of Columbia October 20, 1924, and, interposing no defense, did not deny that she was a resident of the District of Columbia at that time. The suit among other things recites that the defendant (plaintiff herein) had theretofore on July 30, 1923, filed a suit for a limited divorce against her husband, Daye, in the Supreme Court of the District of Columbia, Equity No. 41561, in which suit she likewise recited that she was on July 30, 1923, a resident of the District of Columbia. The interlocutory decree in the divorce suit of Daye against his wife, Equity No. 43202, was entered December 12, 1924 (R. 1); the final decree was signed April 3, 1925, and recites that it shall not be effective until the expiration of the time allowed for taking an appeal. The time allowed for taking an appeal under Rule 10, Court of Appeals of the District of Columbia, is twenty days after the signing of the final decree. It follows, therefore, that plaintiff in the present case could not have attempted to secure an alleged bona fide domicile or residence in Florida until April 25, 1925. She was married to Loughran on January 16, 1926 (Par. 3, R. 2) or seven months and some days after the time when she was unquestionably a bona fide resident of the District of Columbia. The statement, therefore, in paragraph 3 of her Bill of Complaint herein that "for a year or more *prior*" to her absolute divorce from Daye she had removed from the District of Columbia and made her home and residence in Florida and became a bona fide resident thereof (a mere conclusion of the pleader) stands contradicted by plaintiff's other statements of record which are part of the present case. Further, the claim of any extended bona fide residence in Florida is contradicted by the statement on page 14 of petitioner's brief in the present case that the record herein shows "that more than a year *after* she was charged with adultery in the District of Columbia she established a new domicile in Florida." As before noted

she was charged with adultery on October 20, 1924. According, therefore, to counsel's statement in petitioner's brief, she could not have begun to establish a new domicile in Florida until after October 20, 1925. As she was married to Loughran on January 16, 1926, she had, according to her own counsel, less than three months within which to establish the so-called bona fide domicile in Florida which petitioner's counsel so vigorously asserts.[1] In any event, the allegations of the Bill fall far short of a clear showing that she had effected in good faith a domicile in Florida without intent to evade the prohibition against remarriage of the District of Columbia statute, particularly when it is considered that the allegations as to removal from the District and the establishment of her residence in Florida and her alleged bona fide marriage to Loughran stand denied by the answer herein. As to the "residence" in Florida alleged in paragraph 3 of plaintiff's Bill (R. 2), it certainly could not have been a *legal* residence, for under Florida law a legal residence for purposes of divorce requires two years'

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[1] The following table shows the chronology:

July 30, 1923—Plaintiff marries Daye in D. C. Plaintiff files suit against Daye for limited divorce, alleging she is resident of D. C. (Equity No. 41561).

October 20, 1924—Daye sues Plaintiff for divorce on ground of adultery with Loughran, alleging Plaintiff is resident of D. C. Plaintiff is served in D. C. and does not contest suit (Equity No. 43202).

December 12, 1924—Interlocutory decree of divorce entered for Daye against Plaintiff herein (R. 1). Plaintiff still domiciled in D. C., as domicile is still that of her husband according to law:

April 25, 1925—Final decree of divorce effective. Plaintiff still domiciled in D. C.

January 16, 1926—Plaintiff marries co-respondent Loughran in Florida (R. 2).

July, 1927—Loughran "wrongfully" sues Plaintiff for absolute divorce in Virginia (R. 2); Plaintiff asserted Virginia Court had no jurisdiction.

November 8, 1929—Plaintiff on cross-bill in Virginia obtains decree of divorce *a mensa et thoro* from Loughran (R. 12).

August 29, 1932—Plaintiff in Bill claims for first time she established residence in Florida prior to December 12, 1923, thereby contradicting (a) her statement under oath in Equity No. 41561, (b) fact that she was sued and served as resident of D. C. in Equity No. 43,202, (c) fact that her domicile was that of husband Daye until final decree April 25, 1925, (d) admission in Plaintiff's Brief on Certiorari (p. 14) that she did not establish alleged Florida residence until after October 20, 1925.

August 29, 1932—Admission that Plaintiff is now a resident of D. C. (R. 1).

actual residence with the intention of making Florida a permanent abode. To qualify as an elector a residence of one year with the same intention is required (Compiled General Laws of Florida, 1927, Compact Edition, Sections 4980, 248).

Not only therefore does the record in the present case show that defendants denied that plaintiff acquired a bona fide domicile in Florida, but other facts in the record show that it is unlikely, to say the least, that she *could have* acquired a bona fide residence in Florida within the short time which elapsed between the date she was adjuded guilty of adultery with Loughran and the date she married Loughran.

Plaintiff moved to have the case heard on Bill and Answer (R. 25) and the case was so heard (R. 32). The only question, therefore, before the Court upon the hearing on Bill and Answer was whether plaintiff having been adjudged guilty of adultery in a divorce suit and having been prohibited by Section 966 of the District of Columbia Code from remarrying, and having removed to Florida and married Loughran, it being denied that she removed thereto and married him in good faith or only for the purpose of evading and circumventing the prohibition of Section 966, was entitled to dower in Loughran's estate in the District of Columbia. This was the sole question before the trial court and the only question open for adjudication in the Court of Appeals. That Court simply held that where a woman adjudged guilty of adultery in a divorce suit went to another State and remarried, and it was denied that she did so in good faith, she could not claim dower in property within the District of Columbia. Anything else in the opinion of the Court of Appeals is obviously dictum and does not entitle petitioner to a reversal in this court. The opinion of the Court of Appeals, therefore, in no way holds that the guilty party in a divorce suit who has in perfectly

good faith removed to another jurisdiction and there established a domicile, and later, without any intention whatever of evading or circumventing the prohibition of the District of Columbia Code against her remarriage, marries in good faith, is without the pale of the law of the District of Columbia such that her second marriage is not entitled to be recognized for purposes of dower in the District of Columbia. Argument of petitioner's counsel on such a situation is beside the point in the present case on the record now before this Court.

It must be remembered that it was plaintiff and not defendant who set the case down for hearing on Bill and Answer (R. 25). This Court has held that a hearing on Bill and Answer is in effect a submission of the cause to the court by the complainant, on the contention that she is entitled to the decree prayed for in the Bill upon the admissions and notwithstanding the denials of the answer.

> *Reynolds* v. *Crawfordsville Nat'l Bank*, 112 U. S. 405, 409; 28 L. Ed. 733, 735; 10 R. C. L. Sec. 220; *Treman* v. *Poor*, 1 Gill, N. J. (Md.) 216, 19 Amer. Dec. 225.

A textwriter states the rule as follows:

> "If the complainant deems the answer, or regards the affirmative defense of the answer, as insufficient to constitute any bar to his relief, he may set the case down for hearing on bill and answer. The answer must be taken as true in all points. *The allegations of fact in the bill that are denied in the answer are to be taken as disproved and the averments of fact in the answer stand admitted.*
>
> . . . . . .
>
> If any material matter charged in the bill is neither denied or admitted by the answer, it stands for naught." (Fletcher, Equity Pleading & Practice, p. 697. Italics ours.)

Applying the above to the present case the allegation of the Bill as to residence or domicile in Florida having been

acquired in good faith, must be taken as disproved. Plaintiff chose by setting the case for hearing on Bill and Answer to submit to the court the sole question of whether the domicile or residence in Florida *not* having been acquired in good faith, and the marriage in Florida *not* being bona fide, but entered into in Florida to evade the prohibition of the District of Columbia law, still the guilty party who remarried was entitled to dower in property located in the District of Columbia.

Counsel herein are aware of the provisions of Equity Rule 33 of the Supreme Court of the District of Columbia, identical with Federal Equity Rule 33, which provides:

> "Exceptions for insufficiency of an answer are abolished. But if an answer set up an affirmative defense, set-off or counter-claim the plaintiff may, upon five days' notice, or such further time as the court may allow, test the sufficiency of the same by motion to strike out. If found insufficient but amendable the court may allow an amendment upon terms, or strike out the matter."

As to this rule the court said in *Shera* v. *Merchants Life Insurance Co.*, 237 F. 484:

> "The present Equity Rules do not seem to contemplate the submission of a case upon Bill and Answer; they seem rather to direct that the sufficiency of the Answer as a defense, in view of the averments of the Bill of Complaint, shall be raised by motion to strike."

On the other hand, as neither the Federal Equity Rules nor the Equity Rules of the Supreme Court of the District of Columbia by their terms abolish hearing on bill and answer, and Equity Rule 33 seems limited by its terms to the special case, it seems likely that the hearing in the trial court on bill and answer was proper. (See Keigwin Cases on Equity Pleading, p. 516.) Certainly such hearings are frequent in that court. In any event, if this court shall be of

the opinion that under the present Equity Rules there is no authority for hearing a case on Bill and Answer, the hearing in the Trial Court must be taken as a hearing under Equity Rule 33 in which the sufficiency of the defense is tested by a motion to strike out. In this case likewise the only question before the court would be whether a domicile and marriage in Florida not in good faith, but in order to evade the District Statute, must be recognized by the District Courts. In view of the provision of Equity Rule 33 that upon a motion to strike, an amendment may be allowed, it is difficult to see how the Court in the present case could have entered a final decree against defendant. It should be noted in this connection that defendant assigned as error that the Court had no power to sign the decree herein (Assignment of error 1, R. 27).

If follows from the above that the only question submitted to the Trial Court and capable of being ruled on by the Court of Appeals in the present case is whether the District of Columbia courts were compelled to recognize a marriage of a guilty party in a divorce suit contracted not in good faith, as a result of a domicile or residence obtained not in good faith in the state of Florida, and on the basis of such marriage allow dower in lands in the District of Columbia in violation of a positive statute of that District.

II.

The Good Faith of the Florida Residence and Marriage Being Denied the Present Case Is Exactly Similar to Olverson v. Olverson 54 App. D. C. 48, Whose Decision the Court Below Merely Followed.

In Olverson vs. Olverson, 54 App. D. C. 48, the Plaintiff, Anna M. Olverson, had been divorced from William C. Heflin on June 10, 1914, on the ground of her own adultery. In spite of Sec. 966 D. C. Code, "while still a resident of the District of Columbia and domiciled therein," she, six

years later, went to Baltimore and married Olverson, returning to Washington after the marriage where she continued to live with Olverson. She later sued Olverson for divorce and asked for alimony, which was denied and the Bill dismissed. Upon appeal the Court of Appeals said:

> "By her Bill of Complaint the appellant demands that she be recognized as the lawful wife of the appellee, and prays, in effect, that the obligation of the status assumed by her in flagrant defiance of the laws to which she was subject be modified or enforced, as her benefit or advantage may require.
>
> We do not think that the courts of the District can be used for that purpose. The appellant deliberately set at naught a District statute, which she was bound to respect and obey, and she cannot now ask the courts of this jurisdiction to relieve her of the obligations of a relation which she willfully and wrongfully assumed, or to enforce the right to support which would have been hers, had the relation been lawfully contracted in the District:
>
> It is the special duty of courts to discourage infractions of the laws and fixed policies of the particular division of the national domain to which they are accredited, and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts, without bringing such laws and policies into contempt. Judicial tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction. Morck v. Abel, 3 Bos. & P. 35; Collins v. Blantern, 1 Smith's Lead. Cases, pt. 2, p. 716; Vandyck v. Hewitt, 1 East. 96; Clagus v. Penaluna, 4 Term. Rep. 466; Weymel v. Read, 5 Term Rep. 599; Montefiori v. Montefiori, 1 W. Black 363; Wilde v. Wilde, 37 Neb. 891, 56 N. W. 724; Lanktree v. Lanktree, 42 Cal. App. 648, 193 Pac. 954, 955; Beard v. Beard, 65 Cal. 354, 4 Pac. 229; Hunter v. Wheate, 53 App. D. C. 206, 289 Fed. 604; Armstrong v. Toler, 11 Wheat. 258, 260, 6 L.

Ed. 468; Hall v. Coppell, 7 Wall. 542, 558, 19 L. Ed. 244; Oscanyan v. Arms Co., 103 U. S. 261, 267, 26 L. Ed. 539; Higgins v. McCrea, 116 U. S. 671, 686, 6 Sup. Ct. 557, 29 L. Ed. 764.

We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of Section 966, should not be permitted to take advantage of his or her own wrong, and should be left as found in the relation unlawfully undertaken'" (Olverson v. Olverson, 54 App. D. C. 48-49).

It is submitted that the good faith of the removal to Florida and the marriage there being denied, there is no essential difference between the Olverson decision (which has been the law of this jurisdiction for over ten years) and the present case. The only possible chance of showing any distinction between the two cases is to claim, as plaintiff's counsel claims on page 34 of his brief, that the removal to Florida and the marriage there was in "good faith." But if this alleged "good faith" is denied, what difference is there, upon a hearing on Bill and Answer, between the two cases? In each case we have a marriage, a conviction of adultery, a divorce, and the guilty party remarries. In the Olverson case the guilty party remarries six years later in Baltimore. In the present case the guilty party remarries a little over seven months later in Florida. In each case there was a return to the District of Columbia and a resumption of residence here. How soon is not disclosed in the Olverson case, nor very clearly in the present case, though we know that plaintiff herein is now a resident of the District (her Bill so alleges, par. 1, R. 1). The only distinction between the two cases is not in the present plaintiff's favor: Mrs. Olverson at least has the grace not to marry the co-respondent. If there was any flaunting of the Court's decree in the Olverson case, there was an equal amount of it in the present case wherein the plaintiff waited hardly more than seven months after her divorce and then proceeded to marry the co-respondent, her paramour,

though she had the wit to do it in Florida instead of the District of Columbia.

It is submitted that the Olverson case is, as the Court below held, decisive of the present case in every respect upon the present record. Whether it would be if upon a hearing plaintiff could actually *prove* that the Florida residence and marriage was in good faith we need not here discuss. The decision of the Court below must be restricted to the facts presented upon the particular record before it, anything beyond which must be regarded as mere dicta. The only issue before the Court was whether, the good faith of the Florida residence and marriage being denied, the District Courts, as a matter of law, were compelled to recognize a marriage forbidden by a decree of its Supreme Court —a decree entered *in personam*, after personal service upon the plaintiff herein. This was simply the Olverson case all over again, the decision in which was merely followed.

It might be added that petitioner's counsel seems to concede in his brief (Pet. Brief p. 24), that a guilty party who has left the jurisdiction with intent to evade the prohibition, and who has remarried in another jurisdiction is on a different footing from one who has gone to another jurisdiction and remarried "in good faith." But if the good faith is denied, the two are on exactly the same footing, and the same rule should apply.

III.

The Full Faith and Credit Clause Does Not Require the District of Columbia Courts to Recognize a Marriage in Violation of the Public Policy of the District of Columbia Itself.

This Court can take judicial notice that the District of Columbia is less than 10 miles square. It is only a trolley ride or a taxicab trip to Virginia and Maryland. Counsel for respondents might well contend that as Congress has

plenary power to legislate for the District of Columbia, it could prohibit the District of Columbia Courts, in aid of its announced policy against the remarriage of a guilty party in a divorce suit, from recognizing a remarriage no matter where it was celebrated. The Full Faith and Credit Clause of the Federal Constitution does not apply in the District of Columbia; insofar as it is effective, it operates in the District of Columbia only by reason of a Federal Statute (the Act of March 27, 1804; 28 U. S. C. A., Sec. 687) and comity. The Act of March 27, 1804, was, of course, enacted long prior to Section 966 of the D. C. Code. It is unnecessary, however, for respondents herein to contend that Section 966 of the D. C. Code being a later enactment, impliedly modified the earlier statute. It is a well-known exception to the Full Faith and Credit Clause that this clause does not require the courts of a given jurisdiction to recognize a public act of record of another jurisdiction which is contrary to the public policy of the state of the forum (*Simmons* v. *Simmons*, 57 App. D. C. 216, 19 F. (2d) 690, 692). If, therefore, the marriage in Florida was contrary to the public policy of the District of Columbia the Courts of that District were not compelled to recognize it, whether it was entered into in good faith or not.

Counsel for petitioner in his brief argues that Section 966 of the D. C. Code establishes no public policy against a remarriage of a guilty party; that Section 966 merely prohibits such a remarriage and contains no penalty and that the Court of Appeals of the District of Columbia cannot create by judicial fiat a public policy not established by Congress.

In answer, it is difficult for respondents' counsel herein to conceive how Section 966 can be construed other than as a declaration of public policy. You would suppose from reading plaintiff's brief (plaintiff's brief, p. 24), that the only way for Congress to declare the public policy of this jurisdiction would be by an enactment commencing "This

is the public policy of this jurisdiction," thus tagging or labeling the particular section with the capital letters, "PUBLIC POLICY.". Certainly no such method is necessary.

We say that if Section 966 is not a declaration of public policy, what is it? Section 966 *prohibits* remarriage of a guilty party. Why does it prohibit it? Because it is the public policy of this jurisdiction, established by Congress, that the guilty party shall not remarry. Why does Section 966 contain no penalty? Because it is not a penal statute but a declaration of public policy, a declaration of the marital incapacity of a guilty party.

The legislative history of Section 966 shows that it is a declaration of public policy. It was first enacted by the Act of March 3, 1901, 31 Stat. 1345, c. 854, Section 966, and was an amendment to the proposed Code for the District of Columbia. Senate Document No. 174, 56th Congress, 2nd Session, February 19, 1901, entitled "Divorce Law for the District of Columbia," which was submitted to accompany H. R. 9835 (now embodied in Section 966), states.

> "The present divorce law of the District of Columbia, as given in the Sections of the Code which the second Amendment would displace, the Justices of the District Supreme Court and the United States Attorney have unanimously condemned as too lax, in the following written statements."
>
> (Then follows the recommendations of the Judges and the District Attorney, several college presidents, six bishops of various churches, and Cardinal Gibbons, to the effect that the divorce laws should be tightened in the District of Columbia.)

The report concludes:

> "The Amendment is intended to bring the divorce laws that Congress has enacted for the District of Columbia up to the highest grade found in State laws, namely, to that of New York, where absolute divorce is allowed only in cases of adultery. Legal separation

is allowed there, as in this bill, for other causes, but without the dangerous permission to remarry."

The court can also take judicial notice that the divorce laws of the District of Columbia both as to length of time for residence and also in limiting the causes of divorce to adultery, is one of the most stringent in the country. With the exception of South Carolina, where no divorce at all is authorized, the law of the District of Columbia is probably stricter than that of any other State and shows a clear intention on the part of Congress that the District of Columbia shall not become a divorce mill similar to Reno or Paris. Senate Document No. 174 above referred to and the divorce provisions of our Code enacted pursuant thereto are unmistakable statements of public policy. Section 966 in prohibiting the guilty party to remarry shows a clear intention on the part of Congress that an adultress who has victimized one man shall not, at least so far as Congress can prevent it, proceed in a methodical way to victimize another. In such a case Congress has at least seen to it that so far as the District of Columbia is concerned there shall be no financial gain held forth as a reward to the woman who looks upon marriage as an adventure. Nor is there any injustice to the woman in such an enactment; she has notice of the law beforehand and if she remarries one who owns real estate in the District of Columbia, she is on notice that she cannot claim dower in this jurisdiction. The husband is likewise on such notice and if the adultress who was a bad wife to her first husband turns out to be a good wife to her second, he can easily reward her by making a will in her favor.

As to the claim that the public policy of this jurisdiction cannot be created by judicial fiat, it is not so created in the present case. The Court of Appeals has not declared the public policy of this jurisdiction; it has merely taken cognizance of and applied an Act of Congress which declares the public policy of this jurisdiction. In this sense

public policy has frequently been declared by judicial decision and this court has frequently approved of its being so declared where it is established by a statute which is merely construed as to its meaning and effect by the courts. (See *Vidal et. al.* v. *Girard's Executors*, 2 How. 127, 197, 11 L. Ed. 205, 234; *Hartford Fire Insurance Co.* v. *C. M. & St. P. R. Co.*, 175 U. S. 91, 110, 44 L. Ed. 85, 98.)

Further, it seems to be conceded by Petitioner's counsel that if the marriage in the present case were a polygamous, incestuous or an abhorrent marriage, the full faith and credit clause would not require it to be recognized in the District of Columbia even though it had been entered into in Florida. Thus, counsel for Petitioner in his brief cites Section 137, page 176, of the American Law Institute's Restatement of the Law of Marriage and Divorce:

> "If the requirements of the law of the state of celebration are complied with, the marriage is valid, except under the circumstances stated in Section 140 (Polygamous, incestuous and abhorrent marriages), although the parties to the marriage went to that State in order to evade the requirements of the law of their domicile" (Petitioner's Brief, p. 18).

There is a similar exception in Section 138 of the Restatement:

> "Section 138. Marriage after Divorce.—If, by a decree of divorce validly granted in one State, one party is forbidden for a certain time or during his life to marry again, and he goes into another state and marries according to the law of that state, the marriage is valid and will be so recognized even in the state in which the divorce was granted, except as stated in Section 140" (Polgamous, incestuous and abhorrent marriages). (Petitioner's Brief, p. 18).

A similar exception occurs in Section 139 relative to marriage after the parties to a divorce have both been forbidden to remarry. Section 142 of the Restatement likewise provides:

"Section 142. Marriage Contrary to Public Policy.—If any effect of a marriage validly created by the law of one state is deemed by the courts of another state sufficiently offensive to the policy of the latter state, the latter state will refuse to give that effect to the marriage. Comments:

'(a) The action of the state in refusing to give effect to a marriage on the ground stated in this Section does not deny the validity of the marriage, but precludes the enjoyment within the state of some particular right incident to the marriage.'

(Present counsel's comment: Such as the right of dower in the present case.)

(b) The mere fact that the marriage is contrary to statute of the forum does not make it so offensive to policy as to be refused enforcement.

(c) It is ordinarily offensive to the law of a common-law state to allow cohabitation, incestuous by its laws, though the parties were vadidly married in a state which permitted the marriage.' " (Petitioner's Brief, pp. 23-24.)

All of the above Sections of the Restatement are quoted by counsel for plaintiff in his brief herein (Brief, pp. 18, 19, 23, 34). They are of interest in the present case for the reason that Congress in enacting the District of Columbia Code has put the marriage of persons whose previous marriage has not been terminated by divorce in exactly the same classification as incestuous and polygamous marriages. Thus, Chapter 43 of the District of Columbia Code, under the heading, Marriage, provides:

"Sec. 1283. Prohibitions.—The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceeding.

First. (Incestuous marriage of a man.)

Second. (Incestuous marriage of a woman.)

> Third. The marriage of any persons either of whom has been previously married and whose previous marriage *has not been terminated by death or a decree of divorce.*" (Italics ours.)

If, therefore, the marriage in the present case has not been "terminated" by death or a "decree of divorce" it is in exactly the same classification as an incestuous marriage. The latter marriage both the Restatement and presumably counsel for plaintiff herein concede need not be recognized in this jurisdiction.

Has the marriage of plaintiff to Daye in the present case been "terminated" by a decree of divorce within the meaning of the word "terminate" as used in Section 1283?

It should be noted that Section 1283 prohibits marriage of a person whose previous marriage has not been terminated *by death or a decree of divorce.* Certainly the decree of divorce in the present case containing by reference the prohibition against remarriage is no such complete termination of the marriage as death. If, therefore, the reference to death in this paragraph be regarded as throwing any light upon the intention of Congress, as to what constitutes a termination of marriage, a decree of divorce which contains an interdiction against remarriage is not in the same class with a marriage terminated by death.

Websters Dictionary defines terminate as follows:

> "Terminate: To put an end to; to make to cease, to end; as, to terminate an effort, or a controversy."

Insofar as plaintiff, the guilty party, was concerned, her marriage was not terminated in any final sense of the word. It could only be terminated by judicial decree and the decree expressly reserved, the statute being read into it, the right of plaintiff to remarry. The decree, therefore, did not constitute the absolute termination of the marriage; something remained which could have been awarded plaintiff (were it

not for the prohibition of Section 966) but which was not.

The grant of power to the innocent party to remarry is in effect the denial of power to the guilty party to remarry. Something, therefore, was denied to the guilty party; something, therefore, was withheld by the decree; it awarded a divorce but there was "a string tied to it" so far as the guilty party was concerned. The marriage therefore was not *absolutely* terminated within the meaning of Section 1283.

A further indication that the marriage has not been "terminated" in any absolute or complete sense is the fact (which is made much of in plaintiff's brief, p. 26) that Section 966 of the District of Columbia Code prohibiting the remarriage of a guilty party does not in so many words prescribe a penalty. It must be presumed that Congress enacted this section with some intelligent purpose in mind and intended to make it as effective as it reasonably could. If it be conceded that it prescribes no penalty, and if it does not impinge upon the completeness of the decree of divorce, it follows that it is ineffective for any purpose whatsoever. The only rational interpretation of this section is that it is a statutory provision which is read into the decree of divorce in an applicable case and that it deprives that decree of the absoluteness and completeness which it would otherwise have.

It follows, therefore, that plaintiff's right to remarry at all being conferred solely by the decree of divorce obtained against her by Daye, and this decree, having read into it, by necessary implication, a grant of power to Daye alone to remarry, with the subsequent prohibition directed against plaintiff remarrying, plaintiff's divorce was not the absolute termination of her marital status. Her divorce decree carried with it a statutory declaration of marital incapacity.

It should be noted also that the proviso of Section 966 to the effect that only the innocent party may remarry is

contained in the very section which conveys power upon the court to grant a divorce. Certainly it cannot be contended that a court of the District of Columbia could, in the teeth of Section 966, pass a decree of divorce authorizing the *guilty party* to remarry. This being so, the reservation of the right of the guilty party to remarry is a limitation upon the power of the court to terminate a marriage by divorce. The marriage, therefore, is as contended herein, not "terminated" in any real sense of the term for the reason that it can only be terminated by decree; the decree can only be entered pursuant to the power conferred in Section 966 and that power is by a proviso limited to the power to award a decree permitting the innocent party only to remarry. A proviso has been defined as:

> "A proviso is a clause engrafted on a preceding enactment for the purpose of restraining or modifying the enacting clause, or of excepting something from its operation which otherwise would have been within it" (59 C. J. 1087).
>
> "The general office of a proviso is to except something from the enacting clause, or to qualify and restrain its generality and prevent misinterpretation" (*U. S.* v. *Morrow*, 266 U. S. 531, 534, and cases cited).

The grant of power to terminate a marriage contains, therefore, the exception that a court shall reserve in its decree the right of the guilty party to remarry. If so, the marriage has not absolutely been terminated.

The importance of whether plaintiff's marriage has been "terminated" within the meaning of Sec. 1283 becomes clear when it is considered that Section 1287 of the District of Columbia Code makes illegal in the District any marriage of persons domiciled in the District, if celebrated outside of the District, which marriage is illegal inside the District. Section 1287 provides:

"Sec. 1287—If any marriage declared illegal by the aforegoing Sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be considered to be void in said District in the same manner as if it had been celebrated therein."

If, therefore, plaintiff's marriage had not been "terminated" by divorce within the meaning of Section 1283, and if plaintiff still retained her domicile in the District of Columbia, her marriage in Florida would, under the third subsection of Section 1283 be null and void *ab initio* even though it were in fact celebrated in Florida. We feel that in our discussion in Point I of the present brief that we have shown not only that defendant denied the good faith of the Florida domicile and marriage but that there is, to say the least, a strong probability, shown by plaintiff's own statements and ascertainable from the present record, that she never acquired a domicile in Florida, good, bad or indifferent, but that on the contrary she was still in reality domiciled in the District of Columbia at the time of her Florida marriage to Loughran. If so, under Section 1287, read in connection with Section 1283 (3), the Florida marriage was absolutely void *ab initio* and its validity could be taken notice of in the present collateral proceedings.

IV.

A Court of Equity Has the Right to Deny Equitable Relief to One Who Has Deliberately Created a Situation Contrary to the Public Policy of the Lex Fori.

Petitioner herein, *in Equity*, seeks the remedy of the District of Columbia Court, whose decree in *personam* she has flouted and ignored. Her claim for dower is founded upon a marriage prohibited by a statute of the jurisdiction in which she seeks relief.

The principle advanced by respondents and adopted by the lower court, is that Petitioner cannot enter the courts of the District of Columbia and seek the assistance of the dower statute of the District of Columbia upon a status created in contravention of the laws of the District of Columbia.

Abundant authority for this position is found in the following cases:

Armstrong v. *Toler*, 11 Wheat. 258, 260, 6 L. Ed. 468;
Hall v. *Coppell*, 7 Wall. 542, 558, 19 L. Ed. 244;
Oscanyan v. *Arms Co.*, 103 U. S. 261, 267, 26 L. Ed. 539;
Higgins v. *McCrea*, 116 U. S. 671, 686, 6 Sup. Ct. 557, 29 L. Ed. 764;
Hunter v. *Wheate*, 53 App. D. C. 206, 289 Fed. 604;
Olverson v. *Olverson*, 54 App. D. C. 48, 293, Fed. 1015;
Morck v. *Abel*, 3 Bos. & P 35;
Collins v. *Blanterm*, 1 Smith's Lead. Cases, pt. 2, p. 716;
Vandyck v. *Hewitt*, 1 East. 96;
Clugas v. *Penaluna*, 4 Term Rep. 466;
Weymel v. *Read*, 5 Term Rep. 599;
Montefiori v. *Montefiori*, 1 W. Black. 363;
Wilde v. *Wilde*, 37 Neb. 891, 56 N. W. 724;
Lanktree v. *Lanktree*, 42 Cal. App. 648, 183 Pac. 954, 955;
Beard v. *Beard*, 65 Cal. 354, Pac. 229.

The language of this court in *Higgins* v. *McCrea*, *supra*, is peculiarly pertinent here:

> "If from the plaintiff's own stating, otherwise, the cause of action appear to arise ex turpi cause, or the transgression of a positive law of the country, then the court says he has no right to be assisted. It is upon that ground the court goes, not for the sake of the defendant but because they will not lend their aid to such a plaintiff."

In *Oscanyan* v. *Winchester Co.*, 13 Otto 261, 26 L. Ed. 539, 543, this court said:

> "The defense is allowed, not for the sake of the defendant *but of the law itself.* The principle is indispensable to the purity of its administration. *It will not enforce what it has forbidden and denounced.* The maxim, ex dolo malo non oritur actio, is limited by no such qualification. The proposition to the contrary strikes us as hardly worthy of serious refutation. Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect. A stipulation in the most solemn form, to waive the objection, would be tainted with the vice of the original contract, and void for the same reasons. Wherever the contamination reaches it destroys. *The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation.*" See also *Holman* v. *Johnson*, 1 Cowp. 343. (Italics ours.)

No principle seems to be better settled than that no court will lend its aid to one who founds his cause of action upon an illegal act. The good faith of the alleged Florida residence and the marriage therein being denied the petitioner appeared to the Court below as one whose position was created by reason of her violation of Section 966 of the District of Columbia Code (1924), a positive law of the District of Columbia. Upon that ground, the court refused to lend to her its aid. The status she created was prohibited by law, on this present record.

In *Hall v. Coppell*, 7 Wallace 542, this Court said:

> "The law will not lend its support to a claim founded upon its violation."

Considering these cases, it is submitted that the Court below was correct when it said (R. 34):

"It is the special duty of courts to discourage infractions of the laws *and fixed policies of the particular division of the national domain to which they are accredited,* and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts, without bringing such laws and policies into contempt. Judicial tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction. * * * We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of Section 966, should not be permitted to take advantage of his or her wrong, and should be left as found in the relation unlawfully undertaken." (Italics ours.)

V.

Valid Where Performed, Valid Every Where Doctrine, Has No Application Herein.

Many cases are cited by petitioner to the effect that a marriage valid where performed is valid everywhere. To this rule there are exceptions as well known as the rule itself. Of these the most important is a marriage which the legislature, either by express terms or necessary implication has declared to be invalid because of the public policy of the enacting state. In Section 966 District of Columbia Code (1924), Congress has declared the public policy of the District of Columbia. By the statute a personal incapacity to marry is imposed. The language of this Court in *Maynard* v. *Hill,* 125 U. S. 190, 205, 31 L. Ed. 657, indicates the control over the marriage status possessed by the legislature.

"Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people, than any other institution, has always been subject to the control of the legislature."

The Court below interpreting the statute has announced the public policy of the District of Columbia when it said (R. 34):

> "It is the special duty of courts to discourage infractions of the law and *fixed policies of the particular division of the national domain to which they are accredited.*"

If the statute prohibiting the remarriage of the guilty party in divorce actions, contrary to the statute of the forum, is interpreted as an expression of the public policy of the enacting state, then a subsequent marriage in another jurisdiction is invalid in the enacting state, notwithstanding the *lex loci* of the second jurisdiction. The soundness of this contention is supported by:

Andrews v. *Andrews*, 188 U. S. 14, 47 L. Ed. 366;
Haddock v. *Haddock*, 201 U. S. 564, 50 L. Ed. 867;
Georgia v. *Tutty*, 41 Fed. 753 (C. C. S. D., Ga., 1890), 7 L. R. A. 50;
Jackson v. *Jackson*, 82 Md. 17, 34 L. R. A., 773, 775;
Simmons v. *Simmons*, 57 App. D. C., 216, 19 F. (2d) 690;
Pennegar v. *Tennessee*, 87 Tenn. 244, 2 L. R. A. 703;
Williams v. *Oates*, 27 N. C. 535;
In re Stulls Estate, 183 Pa. 625, 39 L. R. A. 539;
Heflinger v. *Heflinger*, 136 Va. 289, 118 S. E. 316, 32 A. L. R. 1095.

Authority therefor is also found in Section 142, page 181 of the *Restatement of the law of contracts* by the American Law Institute, which provides:

> "If any effect of a marriage validity created by the law of one state is deemed by the courts of another state sufficiently offensive to the policy of the latter state, the latter state will refuse to give that effect to the marriage."

In view of the above it is submitted that even conceding the Florida marriage to be valid in Florida, the faith and

credit clause of the Constitution does not compel its recognition in the District of Columbia. The exception relative to public policy is decisive of the issues herein presented. Whether such marriages are prejudicial to the public policy of the District of Columbia is for Congress to determine. Congress by the pertinent statutes has done so. That statute has been interpreted by the Court of Appeals as declaratory of the public policy of the District of Columbia. This Court should sustain it.

Conclusion

If *Certiorari* was granted herein on the theory that a substantial question of Conflict of Laws or Full Faith and Credit was involved, it is suggested, with deference, that the Writ should be dismissed. On any other theory, the judgment below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 565

RUTH LOUGHRAN,

Petitioner,

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN AND CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,

Respondents.

PETITION FOR REHEARING OR MODIFICATION OF DECREE.

WILLIAM E. LEAHY,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 565

RUTH LOUGHRAN,

Petitioner,

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN AND CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,

Respondents.

PETITION FOR REHEARING OR MODIFICATION OF DECREE.

Come now respondents by their attorneys and move this Court for a rehearing or modification of its decree herein on the following grounds:

This Court in its opinion stated:

> "The trustees argue that it must be assumed on the pleadings that plaintiff's residence in Florida and the marriage there were not in good faith. But the bill

> alleged the good faith of the residence and marriage in Florida; and the answer contains no specific denial of that allegation."

With respect, trustees never argued that the bad faith of the residence and marriage in Florida must be assumed. Also, with respect, the answer *does* contain a specific denial of that allegation. The denial of the allegation is as specific as the circumstances would permit. The pleadings show conclusively that respondents with reference to the allegation of good faith as to the residence and marriage in Florida, averred, specifically, that "they had no knowledge" (Par. 3 & 4, R. 17). Under Rule 29 of the Equity Rules of the Supreme Court of the District of Columbia this operated as a denial.[1] We respectfully invite the attention of this Court to the fact that a denial is in truth and in fact a denial, or it is nothing. It is no answer to say that the denial should be more specific for this amounts to holding that the averment "without knowledge" in answer to any given allegation is useless and ineffective for any purpose, which would nullify the quoted part of District of Columbia Equity Rule 29. Certainly the averments of a defendant's pleading are never required to transcend the information in the possession of the defendant at the time. Under the Equity Rules the defendant is given a clear right to state that he is without knowledge as to any given averment of the plain-

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[1] D. C. Equity Rule 29, Similar to Federal Equity Rule 30, reads as follows:

> "The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill * * * specifically admitting or denying, or explaining the facts, upon which the plaintiff relies, *unless the defendant is without knowledge in which case he shall so state, such statement operating as a denial.*"

tiff and this puts the plaintiff to his proof. The law is as stated in *In re Fosgate,* 268 F. 985, and, as the rule itself reads, that an averment "without knowledge" operates as a denial.

This Court likewise said that respondents made no averment that the Florida residence and marriage was with the intent of evading the prohibition against remarriage and that the Court of Appeals did not pass upon the issues sought to be raised. In answer, we respectfully ask the Court to consider whether, when the alleged good faith of the Florida residence and marriage is denied, by the averment of "without knowledge," it does not amount to exactly the same thing as alleging that the Florida residence and marriage was with the intent of evading the District of Columbia statute. The fact that the Court of Appeals did not pass upon the issue placed no additional burden upon the respondent. If it decided the case on another ground, which this Court now determines to be erroneous, respondent was not required, and indeed, as the completely victorious party, could not, under the rules, apply for a cross-petition for a Writ of Certiorari. The result of this Court's decision in the part referred to above, is to leave respondent and the Court of Appeals in doubt as to whether the issue of the good faith or bad faith of the Florida residence and marriage should be inquired into upon remand to the lower court. On the one hand there is the fact that under D. C. Equity Rule 29, defendant submitted a denial by the allegation of "without knowledge," thus raising an issue which, according to this Court's opinion, was never passed on by the Court of Appeals. On the other hand there is the fact that this Court in its opinion takes for granted that the good faith of the Florida residence and marriage was not put in issue. Counsel present this situation to the

Court for such action as it sees fit in order that future difficulty may be avoided.

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I, William E. Leahy, of counsel for respondents, do hereby certify that the foregoing petition for rehearing or modification of the decree is presented in good faith and not for delay.

WILLIAM E. LEAHY.

SUPREME COURT OF THE UNITED STATES.

No. 565.—October Term, 1933.

Ruth Loughran, Petitioner, vs. John Loughran, et al., Trustees. } On Certiorari to the Court of Appeals of the District of Columbia.

[April 30, 1934.]

Mr. Justice Brandeis delivered the opinion of the Court.

This case is here on certiorari (290 U. S. —) to the Court of Appeals of the District of Columbia. It is a suit in equity brought in the Supreme Court of the District in 1932, by Ruth Loughran, then resident there. The defendants are John Loughran and others, trustees of real estate there located. The estate of Daniel Loughran Jr., deceased is a beneficiary. The plaintiff alleges that she is Daniel's widow; and she seeks to enforce as such rights in the nature of dower and to recover unpaid alimony. She alleges that in 1926 she married Daniel in Florida after living there more than two years; that in 1927 she and her said husband established their domicile in Virginia; that in 1929, while they were residing in Virigina, she obtained there a decree of divorce from him *a mensa et thoro*, with an award of alimony payable monthly; and that in 1931, while she remained Daniel's wife, he died, leaving a part of the alimony unpaid.

The trustees defend on the ground that before her marriage to Daniel, the plaintiff had been married to Henry Daye; that in 1924, while she and Daye were domiciled in the District, he had secured there an absolute divorce for her adultery with Daniel; that being the guilty party, she was by § 966 of the Code of the District prohibited from remarrying; and that, having married in violation of the statute, she is not in a position to enforce in a court of the District the alleged rights in the estate of the deceased. A copy of the record of the Daye divorce proceeding is annexed to the answer.

Section 966 provides:

"A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the mar-

riage: *Provided,* That in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other: . . . . . ."

On motion of the plaintiff, the case was heard on bill and answer. The trial court entered a decree for the plaintiff in respect to the claim in the nature of dower. That decree was reversed by the Court of Appeals of the District. It ordered that the cause be remanded to the lower court for further proceedings not inconsistent with the opinion, 66 F. (2d) 567, 569, saying:

"It is unnecessary for us to concern ourselves with the legality of the Florida marriage in that State, or with the subsequent divorce proceedings in the State of Virginia, since the disposition of the case is dependent entirely upon the law of the District of Columbia. Insofar as the law of the District is concerned, the marriage between plaintiff and Daniel Loughran, Jr., in Florida, if performed in the District of Columbia, would be absolutely void, and the plaintiff, being the offending party against the law of the District, is in no position to enforce any claim against the estate of Daniel Loughran, Jr., growing out of the marriage in Florida."

Disclaiming consideration of the doctrine of clean hands, the court added:

"Plaintiff, by her own unlawful conduct has placed herself without the pale of the law, and cannot be heard in a court of equity to take advantage of her own wrong."

The trustees insist that the bill was properly dismissed because the plaintiff, retaining her domicile in the District, went to Florida and married there in order to evade the prohibition of § 966. The plaintiff contends that the admitted facts constitute no defence; that because the marriage was legal in Florida, its legality should, under the established doctrines governing conflict of laws, have been recognized by the courts of the District; and, moreover, that this was required by the full faith and credit clause, since the validity of the Florida marriage had been adjudicated by the Virginia decree of divorce *a mensa et thoro.*

First. Marriages not polygamous or incestuous, or otherwise declared void by statute,[1] will, if valid by the law of the State where entered into, be recognized as valid in every other jurisdiction. *Meister* v. *Moore,* 96 U. S. 76; *Travers* v. *Reinhardt,* 205

[1] For collection of statutes see: Vernier, American Family Laws, §§ 32, 45, 92. Compare The American Law Institute, Restatement of Conflict of Laws, Proposed Final Draft No. 4, March 22, 1934, pp. 88-95.

U. S. 423, 440. The mere statutory prohibition by the State of the domicile either generally of the remarriage of a divorced person, or of remarriage within a prescribed period after the entry of the decree, is given only territorial effect. Such a statute does not invalidate a marriage solemnized in another State in conformity with the laws thereof.[2]

Second. We have no occasion to decide what the rights of the parties would be if it appeared that the plaintiff and her paramour, retaining at all times their domicile in the District, had gone to Florida for the purpose of evading § 966 by a marriage there; and had then returned to the District to live as man and wife.[3] It is argued that marriage within the District would have been illegal because prohibited by § 966; and that a marriage which would be illegal if entered into within the District must be treated under § 1287 as void, even if valid under the law of the State in which it was solemnized. But § 1287 has no application to marriages in violation of the prohibition of § 966. Section 1287 provides:

"If any marriage declared illegal by the aforegoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein."

The sections preceding § 1287 relate solely to marriages void, because incestuous or polygamous, and to those which are voidable, because entered into by a person who was a lunatic, under the age of consent, or impotent, and those which are voidable because procured by force or fraud. In the case at bar, there is no suggestion of any such obstacle to the validity of the marriage. The only objection urged is that by marrying in Florida the plaintiff violated § 966. But the preceding sections do not refer to § 966; and they contain no reference to remarriage of divorced persons. Their only reference to divorce is in Paragraph Third of § 1283 which declares void:

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[2] See Commonwealth *v.* Lane, 113 Mass. 458; Dudley *v.* Dudley, 151 Iowa 142; In re Miller's Estate, 239 Mich. 455.

[3] By the widely prevailing view, the marriage would, even under such circumstances, be held valid by the courts of the domicile in the absence of express provision to the contrary. For cases see Joseph H. Beale, et al., Marriage and Domicile, 44 Harv. L. Rev. 501, 514-517.

"The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce."

Since the plaintiff had been legally divorced from Daye in the District while the parties were domiciled there, and the decree became effective under § 983a unconditionally and irrevocably, she was thereafter an unmarried woman; and if she had cohabited with Daniel in the District after the Florida marriage she would not have been guilty of polygamy. *Commonwealth* v. *Lane*, 113 Mass. 458, 460, 462.

Moreover, it does not appear that the plaintiff and Daniel did retain their domiciles in the District after her divorce, or that after the Florida marriage they ever lived in the District as man and wife. The trustees argue that it must be assumed on the pleadings that plaintiff's residence in Florida and the marriage there were not in good faith.[4] But the bill alleged the good faith of the residence and marriage in Florida; and the answer contains no specific denial of that allegation. Nor does it contain any averment that the residence in Florida and marriage there were with the intent of evading the prohibition against remarriage.[5] The Court of Appeals did not pass upon the issue sought to be raised. It expressly disclaimed deciding whether the Florida marriage was valid or what the effect of the Virginia decree was. And the question whether the marriage in Florida should be deemed void within the District because the parties went to Florida to evade the prohibition of § 966 was not presented by the petition for a writ of certiorari.

Third. The Court of Appeals stated that "the single question for determination here is, whether or not plaintiff is entitled to her dower interest;" and it held that the bill should be dismissed, regardless of whether the marriage was valid under the law of Florida. The requisites of dower are a valid marriage; seizin of

[4]The argument rests upon the phraseology of the answer and the equity rules of the Supreme Court of the District.

[5]The allegation is "'that having openly and in utter disregard of the prohibition contained in said statute violated the terms thereof, she cannot now return to this jurisdiction and this Honorable Court and herein make application for relief with respect to the very situation and relationship which she could and did create only in direct violation of the prohibitory mandate of the statute'".

the husband; and his death. It may be assumed that the law of the situs of real estate determines whether a widow is entitled to dower. Compare *De Vaughan* v. *Hutchinson*, 165 U. S. 556, 570. But, if the marriage was valid under the laws of Florida, the plaintiff was, under established doctrines of the conflict of laws, Daniel's widow. As such she was entitled, as an incident of the marriage, to dower in the property within the District. For, while a statute of the District provides for forfeiture of dower in case of the wife's adultery during marriage;[6] none denies dower to a widow because she had been guilty of adultery prior to the marriage with her late husband.

Section 966 is not extra-territorial in its operation. It does not purport to prohibit remarriage outside the District; and no other statute denies dower to a widow because by remarrying elsewhere she had disregarded the prohibition contained in § 966. It does not make remarriage a crime, or in terms impose any penalty, even if contracted within the District; and obviously it could not make criminal remarriage elsewhere. Nor does it in terms declare the remarriage void. Apparently, it is the law of the District that a remarriage elsewhere in disregard of the prohibition of § 966, even where both parties remained domiciled in the District, is not void *ab initio*, but, at most, voidable; and that a voidable marriage cannot be annulled after the death of either spouse.[7]

No case has been found in which, independently of statutory direction, a widow has been denied dower on the ground that a remarriage, legal by the law of the place where celebrated, had been entered into in violation of some prohibition imposed by the law of the State in which the divorce was granted and the property was situated.[8] Ordinarily the operation of a statute of descent and dis-

[6]The Code of the District 1929, Title 14, § 30, declares: "If a wife willingly leave her husband, and go away, and continue with her advouterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coercion reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action."

[7]Sammons *v.* Sammons (S. C. D. C.), 46 W. L. R. 39, 41. See Tyler *v.* Andrews, 40 App. D. C. 100, 104; Simmons *v.* Simmons, 57 App. D. C. 216, 218-219; 19 F. (2d) 690, 692-3; Abramson *v.* Abramson, 60 App. D. C. 119, 121, 122; 49 F. (2d) 501, 503, 504. Compare Dimpfel *v.* Wilson, 107 Md. 329; Bonham *v.* Badgley, 7 Ill. 622.

[8]Compare Putnam *v.* Putnam, 8 Pick. 433; Dickson *v.* Dickson's Heirs, 1 Yerg. 110. See 18 C. J., p. 859, § 102.

tribution is held not affected even by the fact that the death of the decedent was caused by a crime of the heir;[9] and by the common law dower is not barred even by misconduct during marriage. Since, as matter of substantive law, the plaintiff is entitled to dower in property within the District, if the marriage in Florida was valid, and its validity was assumed by the Court of Appeals, we have no occasion to consider whether the decree in the Virginia divorce proceedings made that matter *res judicata*.

Fourth. The relief sought by the bill includes, besides dower rights, a claim under the Virginia decree for the alimony which had accrued and remained unpaid at the time of Daniel's death. The right to recover the alimony is independent of the right to dower. It rests upon a judgment to which, so far as appears, full faith and credit must be given by the courts of the District. It is true that, under rules of law generally applicable, these courts may refuse to enforce a mere right of contract if it provides for doing within the District things prohibited by its laws. *Bothwell* v. *Buckbee, Mears Co.*, 275 U. S. 274, 278. It may, in the exercise of the police power, prohibit the enjoyment by persons within its borders of many rights acquired elsewhere and refuse to lend the aid of its courts to enforce them. *Home Insurance Co.* v. *Dick*, 281 U. S. 397, 410. But when rights, however arising, have ripened into a judgment of a court of another State, the full faith and credit clause applies. *Fauntleroy* v. *Lum*, 210 U. S. 230; *Converse* v. *Hamilton*, 224 U. S. 243, 260; *Kenney* v. *Supreme Lodge*, 252 U. S. 411, 415. And courts of the District are bound, equally with courts of the States, to observe the command of the full faith and credit clause, wherever applicable. *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145, 155. Thus, the facts stated afford no basis in the substantive law for dismissal of the bill so far as it seeks to recover unpaid alimony. Whether the fact that this claim has been presented also in the probate court constitutes a reason for denying relief here, was not discussed below, and on this matter we express no opinion.

Fifth. It remains to consider whether the denial of relief can be justified on some principle of adjective law. The Court of Ap-

[9] McAllister *v.* Fair, 72 Kans. 533; Eversole *v.* Eversole, 169 Ky. 793; Gollnick *v.* Mengel, 112 Minn. 349; Holloway *v.* McCormick, 41 Okl. 1; Johnson's Estate, 29 Pa. Sup. Ct. 255.

peals holds that the "plaintiff by her own unlawful conduct has placed herself without the pale of the law;" but it does not state specifically the ground for that conclusion. The bar applied is not the plea of illegality commonly interposed in suits brought to enforce contracts tainted by illegality. In those suits the illegality relied on is inherent in the cause of action; is directly connected with the relief sought; and constitutes a substantive defence. Here, the relation of the illegality to the relief sought is indirect and remote. The wrong done is a thing of the past and is collateral. By the long line of cases following *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, it is settled that illegality constitutes no defense when merely collateral to the cause of action sued on. A "person does not become an outlaw and lose all rights by doing an illegal act." *National Bank & Loan Co.* v. *Petrie*, 189 U. S. 423, 425. Courts grant relief against present wrongs and to enforce an existing right, although the property involved was acquired by some past illegal act. *Brooks* v. *Martin*, 2 Wall. 70, 79, 80; *Planters' Bank* v. *Union Bank*, 16 Wall. 483, 499, 500.

The Court of Appeals, while it disclaimed acting on the doctrine of clean hands,[10] declared that *Olverson* v. *Olverson*, 293 Fed. 1015 (decided by it in 1923) is decisive of the case at bar. But both the facts and the relief sought are different in the two cases. In the first place, the parties in the *Olverson* case were at the time of the marriage domiciled in the District; remained so when they went to Baltimore for the marriage ceremony with the purpose of evading the prohibition of § 966; returned immediately thereafter to the District; and then lived in the District as man and wife. On the other hand, in the case at bar it does not appear that the plaintiff and Daniel were domiciled in the District at the time of the marriage; or that they went to Florida in order to evade the prohibition of § 966; or that during their marriage they lived in the District; or that they ever cohabited there as man and wife. In the second place, the *Olverson* suit was brought by a wife for a decree of divorce *a mensa et thoro* with a motion for alimony; and was dismissed on the ground that the plaintiff could not "ask the courts of this jurisdiction to relieve her of the obligations of a relation which she willfully and wrongfully assumed."

[10] It had stated in Simmons v. Simmons, 57 App. D. C. 216, 218, 19 F. (2d) 690, 693, that the Olverson case rested on the doctrine of clean hands.

The suit at bar was brought after termination of the marriage by death to enforce existing property rights growing out of the marriage in Florida and the decree entered in Virginia. It was not brought to enforce any transaction had within the District; nor was it brought to enforce an illegal contract; or to further an illegal relation.[11] Equity does not demand that its suitors shall have led blameless lives. Neither the doctrine of clean hands, nor any kindred principle on which courts refuse relief, is applicable here. The decree of the Court of Appeals is vacated and the cause remanded to it for further proceedings not inconsistent with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[11] Compare Western Union Telegraph Co. *v.* Union Pacific Ry. Co., 3 Fed. 423, 427-8; Bateman *v.* Fargason, 4 Fed. 32.